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No. 80-518

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1980

U.S. INDUSTRIES/FEDERAL SHEET METAL, INC.,
and
INSURANCE COMPANY OF NORTH AMERICA,
*Petitioners,*

v.

DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR,
and
RALPH RILEY,
*Respondents.*

**On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit**

## JOINT APPENDIX

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**PETITION FOR CERTIORARI FILED SEPTEMBER 30, 1980**
**CERTIORARI GRANTED MARCH 9, 1981**

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Decision and Order of Administrative Law Judge William A. Gershuny, dated June 22, 1978 ..... 19a

Decision of the United States Department of Labor Benefits Review Board, dated February 27, 1979.. 12a

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**RELEVANT DOCKET ENTRIES**

UNITED STATES COURT OF APPEALS
FOR THE
DISTRICT OF COLUMBIA CIRCUIT

RALPH RILEY, *Claimant/Petitioner*

v.

U.S. INDUSTRIES/FEDERAL SHEET METAL,
*Employer/Respondent*

and

INSURANCE COMPANY OF NORTH AMERICA,
*Carrier/Respondent.*

DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS,
*Intervenor*

*Date—Filings—Proceedings*

(D)4-24-79—4—Petitioner's petition for review of an order of the Benefits Review Board (m-24)

(D)4-25-79—Certified copy of petition for review was mailed to Richard W. Galiher, Esquire; US Dept. of Labor and Benefits Review Board

(D)5-14-79—Certified Index to Record (n-4)

(D)6-15-79—4—Petitioner's motion for leave to file motion to extend time to file brief and appendix (m-15)

(E)6-21-79—Clerk's order granting petitioner's motion for leave to file motion to extend time to file brief and granting motion to July 6, 1979

(E)6-21-79—4—Petitioner's motion to extend time to file brief—granted

(T)7-9-79—15—Petitioner's brief (m-6)

(T)7-9-79—7—Appendix (m-6)

*Date—Filings—Proceedings*

(C)8-6-79—4—Respondents' (US Industries/Federal Sheet Metal, Inc., et al.) motion to extend time to file brief (m-3)

(D)8-9-79—4—Motion of Director, Office of Workers' Compensation Programs, for leave to intervene, time having expired (m-7)

(T)8-10-79—Clerk's order that the time for filing the supplemental appendix is enlarged to 20 days from the date of this order and the time for filing respondents' brief is extended until 30 days thereafter

(C)8-15-79—4—Respondents' (Federal Sheet Metal and Insurance Co. of NA) opposition to motion of Director, OWCP for leave to intervene (m-14)

(D)8-15-79—7—Supplemental Appendix (m-15)

(T)9-17-79—15—Respondent's (US Industries / Federal Sheet Metal) brief (m-17)

(E)10-31-79—Per Curiam order granting the motion of the Director, Office of Workers' Comp. Program for leave to intervene and granting their motion to adopt a portion of petitioners brief and dissenting opinion below. The Director shall submit 15 copies of the dissenting opinion in lieu of his brief with appropriate covers and suitably identified. Tamm, Wald (who did not participate) and Mikva, CJ's

(T)11-8-79—15—Intervenor's brief (m-8)

(D)2-27-80—4—Respondent's (US Industries/Federal Sheet Metal) motion for continuance of argument (m-27)

(T)3-7-80—Clerk's order granting respondent's motion for continuance of argument and the argument herein presently scheduled for March 21, 1980 is postponed pending further order of the Court; the Clerk is di-

*Date—Filings—Proceedings*

rected to reschedule this case for argument during the normal course of the business of his office

(E)4-7-80—Clerk's order, sua sponte, that the following times are allotted for oral argument; petitioner—15 min. and respondent—15 min. Only one counsel per side to argue.

(E)4-25-80—Argued before Wilkey, Wald* and Edwards, CJ's

(H)5-22-80—Opinion for the Court filed by Circuit Judge Edwards.

(H)5-22-80—Ordered and adjudged by this Court, that the decision of the Benefits Review Board is vacated and the case is remanded for full reconsideration of petitioner's claim, in accordance with the opinion of this Court filed herein this date.

(C)6-3-80—4—Petitioner's bill of costs (M-29)

(D)6-5-80—15—Respondent's (US Industries/Federal Sheet Metal) petition for rehearing en banc and/or suggestion for rehearing en banc (m-5)

(D)6-11-80—4—Intervenor's motion for leave to file bill of costs, time having expired (m-11)

(B)07-03-80—Per Curiam order that respondents' petition for rehearing is denied; Wilkey, Wald, and Edwards, CJ's

(B)07-03-80—Per Curiam order, en banc, that respondents' suggestion for rehearing, en banc, is denied; CJ Wright, McGowan, Tamm, Robinson, MacKinnon, Robb, Wilkey, Wald, Mikva and Edwards, CJ's

(B)07-23-80—Clerk's order granting intervenor's motion for leave to file bill of costs, time having expired

*Date—Filings—Proceedings*

(B)07-23-80—Intervenor's bill of costs (m-11)—filed per above order

(T)7-28-80—4—Petitioner's motion for allowance of attorney's fees (m-22)

(T)08-05-80—4—Respondents' motion to stay judgment of this Court on attorney's fees and to stay the mandate from this Court for remand by the BRB to the administrative law judges (m-5)

(T)08-05-80—4—Respondents' opposition to motion for allowance of attorney's fees (m-5)

(T)10-09-80—Notice from Clerk, Supreme Court that a petition for writ of certiorari was filed in SC No. 80-518 on September 30, 1980

(B)12-24-80—Per Curiam order that costs in the total amount of $7.00 are awarded in favor of intervenor (Dept. of Labor) and taxed against respondents (US Industries/Federal Sheet Metal, et al.); and that counsel fees in the total amount of $2,422.50 are awarded in favor of petitioner (Riley) and taxed against respondents (US Industries/Federal Sheet Metal, et al.); Wilkey, Wald and Edwards, CJ's

(T)12-31-80—4—Respondents' motion for reconsideration and stay of this Court's order filed December 24, 1980 (m-30)

(B)2-12-81—Per Curiam order that respondents' motion for reconsideration and stay is granted insofar as it seeks reconsideration of this Court's order of December 24, 1980, awarding attorneys' fees against respondents; no attorney's fees shall be taxed against respondents at this time; further ordered, by the Court, that respondents motion for reconsideration and stay is granted insofar as it seeks reconsideration and stay

*Date—Filings—Proceedings*

of this Court's order of December 24, 1980, granting costs to the intervenor Department of Labor; Wilkey, Wald and Edwards, Circuit Judges (See attached memorandum to order)

(T)03-11-81—Certified copy of order from Clerk, Supreme Court granting the petition for writ of certiorari in SC No. 80-518 on March 9, 1981

(C)03-23-81—Letter from Clerk, SC asking that record be certified and transmitted to SC in No. 80-518

(C)03-31-81—Clerk's order that the Clerk is directed to certify and transmit to the Supreme Court the entire record herein. In addition, the Clerk shall also transmit to Supreme Court the Certified Index

(C)04-01-81—1 volume of original Clerk's File, Original Certified Index, 1 copy of petitioner's respondent's, intervenor's briefs, 1 copy of appendix, supplemental appendix, 1 copy of petition for rehearing and 1 copy of Court's opinion transmitted to Clerk, Supreme Court by messenger

(C)04-01-81—Receipt dated 4/1/81 from SC for material listed in above 4/1/81 entry

UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES

Case No. 78-DCWC-82

RALPH RILEY, *Claimant,*

against

U.S. INDUSTRIES/FEDERAL SHEET METAL, *Employer,*
INSURANCE COMPANY OF NORTH AMERICA, *Carrier.*

Washington, D.C.
March 20, 1978

• • • • • • • • • • •

[12]

**EXCERPTS FROM TESTIMONY**

**Howard Sutherland**

Q. How long have you been a sheet metal worker, Mr. Sutherland?

A. Twenty some years.

Q. Could you describe for His Honor the nature of your occupation, sir? What is entailed in your kind of work?

A. Well, our kind of work is sheet metal work—it is duct work, heating and air conditioning, and ventilation.

Q. Are you required to lift and move heavy weights, sir?

A. Yes, sir.

Q. Could you give His Honor an idea of the size of the metal duct work that you work with?

A. Well, it varies; some of it might weigh 50 pounds, some of it might weigh 700, 800 pounds.

Q. Now, Mr. Galiher has already pointed out in his opening statement that you have been a friend——

MR. GALIHER: Objection.

JUDGE GERSHUNY: The objection will be sustained. Just ask your questions, please.

MR. GREEN: Yes, your Honor.

By MR. GREEN:

Q. Mr. Sutherland, you have been a friend of Mr. Riley's for several years, is that correct?

A. Possibly 14, yes.

[13] Q. And have you riden [sic] to work with him over a period of years, sir?

A. We worked together for approximately 14 years, I would say.

Q. I would like to direct your attention, Mr. Sutherland, to the date of Mr. Riley's injury, November 19, 1975, sir, and I would ask you, where were you working on that day.

A. We were working at Walter Reed Hospital.

Q. And who were you employed by, sir?

A. Federal Sheet Metal.

Q. Who did you ride to work with?

A. Ralph Riley.

Q. All right, sir. On that job site that day, you were working with Ralph Riley?

A. Yes, sir.

Q. What did your job consist of on that day, sir?

A. Well, we were hanging a sheet metal duct up in the ceiling on some trapeze hangers. It was pretty heavy duct; it was about four or five line. Just like I said, it varies; some might weigh 100 pounds, some might weigh 700, 800 pounds. But we had equipment to lit it with, too, you know.

Q. All right, sir. Who was your foreman on that day?

A. Well, a new boy was in here—I don't know his name. He was only foreman one day—no; maybe three days, I guess; two or three days.

[14] Q. Prior to that time, Mr. Sutherland, who had been your foreman and Mr. Riley's foreman, if you know?

A. John Fury.

Q. Mr. Fury?

A. Yes, sir.

Q. Now, you were hanging duct work?

A. Yes, sir.

Q. Where were you working, sir, when Mr. Riley was hurt?

A. I was working on the scaffold beside him.

Q. How big was that scaffold, sir?

A. Approximately four by eight—four foot wide and eight foot long.

Q. All right, sir. And did you have occasion to notice Mr. Riley receiving an injury to his neck?

A. Well, he was moving from the lower level to the top level, and when he raised up to move up, he struck his neck and shoulder against the duct work that was hanging above him, and knocked his hat off. And then he fell on his knees and sat there probably about five minutes, and then he sat down. And he sat down for a few minutes; then I asked him was he all right, and he said he thought he would be all right.

And I asked him could he get off of the scaffold and walk down the ladder, and he said, yes, he could make it. So, he climbed down off the ladder and sat down on some duct work down there. And I started gathering the tools up, because it [15] was pretty close to quitting time, and by the time I got all the tools gathered up and everything, it was time for us to leave, so we left on out there.

Q. About what time was that, sir, when Mr. Riley got hurt?

A. Well, I would say it was somewhere in the neighborhood of 3:00, but I didn't look or ask anybody; somewhere in the area of that.

Q. What was your usual quitting time?

A. Well, we generally start picking tools up—it is according to how many tools you have out. We had quite a few tools out that day—extension cords and electric drills, and different things—and I had to get them up myself. So, I would say, that day, it would probably take me a half an hour or so to get them up.

Q. Mr. Sutherland, when you saw Mr. Riley hit his neck, could you describe for the Court the movement, the physical movement that you saw Mr. Riley make?

A. Yes, sir. You see, what happened: the scaffold was leveled up like this (indicating) on the top level, and then there is a lower level like this (indicating). He was working under the lower level up like this (indicating), and then he struck——

Q. Mr. Sutherland, excuse me, and I am sorry for interrupting you, sir. So the record will reflect what you are [16] saying, you are saying there are two levels to the scaffold?

A. That's right.

Q. And could you indicate for this record the difference in height between the two bottoms of the scaffold?

A. Well, I would say it is possibly about three feet; it was two or three feet.

Q. Difference in height, sir?

A. Difference in height.

JUDGE GERSHUNY: Let the record show that the witness is indicating that the upper level is about five and a half feet high and the lower level is about three feet lower.

THE WITNESS: Approximately that, yes. But he was going from the lower level up to the top level, and when he raised up like that (indicating), he hit his neck. And then when he did, he come down on the lower level like that (indicating). And I said, "Are you all right?" He said, "I think

I will be all right." And then he pushed the rail and sat down on the scaffold.

He sat there approximately, I would say, a good five minutes or so. And then I asked him, "Can you get down off the scaffold or come down the ladder?" And he said, yes. that he could make it down. So, he climbed off from the scaffold and got on the ladder and climbed down the ladder, and like I say, he sat down on some duct work and stuff down there. And while he was sitting there, I gathered all the tools up, and everything.

[17] By Mr. Green:

Q. Mr. Sutherland, what piece did Mr. Riley hit, sir; what did he hit when he came off?

A. Well, he hit the lower line of duct; it was a huge duct.

Q. How much was that duct; do you know how much it weighed?

A. I would say in the neighborhood of probably about 450, 500 pounds, somewhere in that area; around 500 pounds, maybe more.

Q. That line of duct?

A. Yes, sir.

Q. All right, sir. Thank you. What happened after the shift broke for the day; what did you do then?

A. Well, we just come on out and got in the car and come on home.

Q. Did Mr. Riley complain of any problem in the car ride home, sir?

A. Yes, he complained he had—he said he was still a little dizzy and his shoulders were hurting and his neck was hurting a little bit. But, I mean, generally, I figured he would be all right, with something like that happening.

Q. When did you know that something wasn't all right with Mr. Riley; when was the next time you knew that?

A. Well, the next morning, he was supposed to meet me to [18] ride.

Q. What time was that, sir?

A. I would say he would meet me in the morning probably around 5:30, or something like that; between 5:30 and 6:00.

Q. All right, sir.

A. And so, his wife called before I got ready to go to work, and told me that Riley was in the hospital. And I asked her how was he, and she said his neck and——

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THE WITNESS: Well, she told me he was in intensive care, and she really didn't know how he was, but when she took him there, that he was complaining about his neck and his shoulder and his chest and arm hurting. And she didn't know no more until she talked to the doctor.

By MR. GREEN:

Q. After you received that call, what did you do about going to work?

A. Well, when I got to work, I told the guys at work that Mr. Riley had struck his neck and shoulder on the duct, and I also told them that his wife told me that he was in the hospital, intensive care, hurting with chest pains, his arm, and [19] his neck and all. And one of them said, "Well, it is probably a heart attack, or something like that." I said, "Well, I don't know."

Q. Do you have a recollection now, Mr. Sutherland, of who was on the job when you discussed this; do you have a recollection of who you told, sir?

A. Well, I told Fury, for one.

JUDGE GERSHUNY: Could we have a spelling for that person's name?

MR. GREEN: Your Honor, I believe it is F-u-r-y.

By MR. GREEN:

Q. Is that correct, Mr. Sutherland; do you know?
A. I don't know.

Q. All right, Mr. Sutherland. Do you have a recollection of anyone else, sir?
A. Well, just like I say, I told two or three guys. You know how it is on a job—everybody goes talking. And different ones said, "Well, he probably had a heart attack," or something like that. That's as far as I know on that.

Q. All right, sir.

MR. GREEN: I have nothing further, Your Honor.

JUDGE GERSHUNY: Mr. Galiher?

## CROSS-EXAMINATION

By MR. GALIHER:

Q. Mr. Sutherland, how do you know that the date that [20] this injury happened to Mr. Riley was November 19th, 1975?
A. Well, we discussed it with Mr. Green, too.

Q. And how did you discuss it?
A. Well, we discussed it when the accident happened and the date it happened, and everything.

Q. When did you first discuss it with Mr. Green?
A. We discussed it with Mr. Green probably about two or three—about three weeks after it happened, approximately, or somewhere in that area. Now, it could be more or less; this is two years away.

• • • • • • • • • • •

[21] Q. How long had you been working on the job at Walter Reed Hospital before November 19th, 1975?
A. Possibly three to four weeks.

Q. And before that, where had you and Mr. Riley been working?

A. We worked at Chalk Point Power Plant for three and a half years together.

Q. And when did you last work for Chalf Point Power Plant before you came to work at Walter Reed?

A. Approximately six months before.

Q. You had been out of work for six months?

A. Approximately; it varied, I mean, one way or the other.

Q. Had you completed the job at Chalk Point?

[22] A. Correct.

Q. So, after Chalk Point, you were six months out of work, and then the next job you had was at Walter Reed?

A. Could I explain something right there, please?

Q. Sure.

Q. Well, when we got laid off at Chalk Point Power Plant, there wasn't any work available at the time. So, we called in the union hall and went by the union hall and reported that we were out of work. And they placed our names on the list. They said that as soon as work gets available, they would give us a call.

Q. And then it was six months until it became available?

A. Right.

Q. Did you and Mr. Riley work anywhere else in that six-month period?

A. No, sir.

Q. Did you draw unemployment?

A. Yes, sir.

Q. Up until the time that you went back to work?

A. Yes, sir.

Q. Now, you say that on the 20th —was he supposed to ride to your house; is that the way is worked, and then you drove in your car from your house to the job?

A. Not every day now; I mean, we rotated it.

Q. On the 20th, though——

[23] A. That's the day that I drove.

Q. Okay. Now, after you talked to his wife, you say you went to the job and you talked to Fury, Mr. Fury, and you told him two things: First of all, you told him that he had had a—you told them that Riley had struck his neck and shoulder at work. And then, did you also tell him that he had chest pains, and so forth, also?

A. I told him his wife told me that when she took him to the hospital, that his neck was hurting, and his shoulder and down his arm and his chest, and she didn't have no further report on it because he was in intensive care; she hadn't talked to anyone.

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[41] Q. And was this line about five or six feet above your head when you were standing on the lower scaffold?

A. Well, I would say it would be probably about shoulder height, something like that, in order to move the stuff around.

Q. Now, would you describe exactly what you saw Mr. Riley do?

A. Well, we got ready to move up and we were a lot like this facing each other (indicating), and then he got ready to move up on the other scaffold and he bent down like that, and when he went to get up on the other scaffold, his neck hit the duct line and it knocked his hat off. And then he went back down to the same level he was one, back down on his knees. And like I say, he turned around and sat down on the scaffold.

Q. Okay. So, his neck struck the duct line right in the back of the neck?

A. Well, I would say right along here (indicating), back of the neck and shoulder, because it just got his hat like that. If it had hit high, it wouldn't have knocked his hat off, but it hit down low right there, hit down low right there and knocked his hat off.

Q. What was he going to do if this injury hadn't happened to him?

A. He was going to adjust the hangers; in other words, line the duct up.

Q. So, he would have been getting up like this, but there [42] was a duct work here—here, being right above his shoulders—and then, as he moved to get up on the higher scaffold, then that brought his neck into contact with the scaffold, is that right?

A. You lost me on the scaffold. I mean, his neck didn't hit——

Q. You described that he was going to get up three feet, and he is going to put his foot up or his knee up to try to get up to this next line. He was not stepping; he would have to put his knee up because it was too high, isn't that right?

A. Yes.

Q. So, when he put his knee up, then, as he got his knee up on the scaffold, is that when his head struck the scaffold, or was it in the act of moving from the lower scaffold to the upper scaffold?

A. Well, his head never struck the scaffold.

Q. Pardon me; the duct.

A. Well, like I say, when he was going from one level to the other level, the duct he hit was just above the top level, just right above it. And so that is when he went in like that to raise up, when he raised up like that to get on the scaffold, then it when he hit—you know, when he started going up.

Q. Okay. Now, when he hit it, you said, then, he came back down on the lower scaffold again?

A. He never did get on the top scaffold; he tried to. He [43] went back down on the lower scaffold.

Q. Then, he came back down to the lower scaffold and then sat on the top of the scaffold for a few minutes?

A. Well, he came back down on his knees, and then he was on his knees for a second or two, like it had stunned him, or something, you know.

Q. Was he on his knees on the lower scaffold?

A. Yes. He never did get to the top scaffold; he was only trying.

Q. Now, when he got down to the lower scaffold, then you say he sat down?

A. He sat down flat on the scaffold. And I said, "Are you all right?" He said, "Yes, I think I am going to be all right." And then, we talked a few minutes, and then I said, "Well, are you going to be able to make it off the scaffold, down the ladder?" He said yes.

So, he climbed on down the ladder and sat down on a piece of duct down there, and I started gathering the tools up and everything. And then, by the time I got all the tools gathered up, it was time for us to leave and go home.

Q. Now, were there any other Federal employees that you had to check out with before you left?

A. No.

JUDGE GERSHUNY: You don't mean federal employees; you mean any other employees?

[44] MR. GALIHER: Of the employer, Federal Sheet Metal.

THE WITNESS: Now, occasionally, you would go by a little shed there, but that is very rare; I mean, most guys walk right on out the door at quitting time and they don't check in.

By Mr. Galiher:

Q. And this particular afternoon, you didn't check in?

A. No. Excuse me a minute. Checking it—I would like to explain something, too, there. If you are running late, or something like that, you know, packing tools up and stuff like that, if you happen to be running late and go to check in, everybody is gone, so there wouldn't be no need checking in.

Q. What were the hours of work on the job?

A. I think it was 7:30 to 4:00.

Q. Okay. Or, 7:00 to 3:30?

A. 7:00 to 3:30, or something like that. I really forget what the hours were.

Q. Now, during the time that you worked at Chalk Point, had Mr. Riley ever complained to you about his arthritis bothering him?

A. He has mentioned occasionally at times about having arthritis.

Q. Where would the arthritis be: where did he complain about it?

A. Well, he said in the arms, maybe; his elbow hurt him [45] a little bit sometimes.

Q. Did he ever complain to you about arthritis in his neck and shoulders?

A. I can't verify—you know, he never did complain that much, let's put it that way. I mean, he always did a good day's work and he always did his work.

Q. Well, when he did complain and told you that he had arthritis, your best recollection now is that this was somewhere in his arm?

A. Well, really, I didn't question him that much, but it seemed like he did, maybe, have a little problem in his elbow, or something. But, I mean, he never did complain that much.

Q. Had you ever been on any other jobs with him when Mr. Riley was injured?

A. Yes, I was working on Benning Road and he was injured.

Q. How was he injured out there?

A. Well, he stepped on some fiberglass insulation and he slipped on the scaffold and broke two ribs—I think it was two ribs.

Q. And when was that?

A. See, now, I couldn't tell you the date of it. I would say approximately six years ago—five years ago, I would say; five years would probably be pretty close to it.

Q. And do you know how long he was off?

A. He didn't miss any time at all.

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[46] Q. Now, how long did you continue to work for Federal Sheet Metal after Mr. Riley went in the hospital?

A. Very few days, because it was a long ways for me to drive, and everything, and so, I figured that I would just try to find something closer where I wouldn't have to drive by myself so far away.

Q. So, because Mr. Riley wasn't driving with you, you decided just to find a job closer to home, is that right; is that your testimony?

A. Well, I'm saying, regardless, if it had been to anybody else riding together, it is quite a ways to drive by yourself. [47] I'm not talking about quite a ways to drive by yourself, but quite a ways to drive when you can get somebody to ride back and forth with and you get a job closer.

Q. Would you say maybe you worked about a week or so after that; when you say a few days, is that what you are talking about?

A. Well, I would say probably four or five days—I don't know exactly; I couldn't say how long, but it wasn't very many days. It may not even have been five days.

Q. Would you say that it was at least maybe one or two days after he got hurt that you continued to work, or did you stop work the exact date that he stopped work?

A. No; I worked after that. I worked, like I say, maybe three or four days, or five days; I can't remember right off how many days it was, but I know it was a short time.

Q. How about one day; would that be a better estimate?

A. I think it was more than one day, right off the bat.

Q. Now, did you talk to anybody besides Mr. Fury to tell them about Mr. Riley's accident?

A. Well, I talked to Fury about the accident, and after I told him the situation, his wife gave me a report on the phone, you know, that she didn't know what was wrong with him, what kind of shape he was in or what it was—that he was having pains in his neck and shoulder—and I just told people that he was in the hospital, intensive care.

[48] Q. And you told them the day after this incident occurred when you came in, is that right?

A. That's right.

MR. GALIHER: I do not have any other questions, Your Honor.

JUDGE GERSHUNY: Mr. Green?

MR. GREEN: Just one, Your Honor.

## REDIRECT EXAMINATION

By MR. GREEN:

Q. Mr. Sutherland, you recall an injury to Mr. Riley's ribs, is that correct, sir?

A. Yes.

Q. And is it your recollection that this man continued to work with broken ribs?

A. Yes, he continued to work with broken ribs at the time; I mean, he was a foreman on the job at that time.

Q. Do you know if he ever made a claim?

A. No; there was no claim, nothing made. Right then, he was doing ladder work at the time; after he had his accident, he was doing a little ladder work, and they just told him to just come on in and they would, you know, keep paying him.

Q. They kept paying him?

A. Yes. He just came in and just, more or less, did light things or whatever little things that had to be done. But he never claimed any injury, or anything like that, as far as I [49] know

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**Ralph Riley**

DIRECT EXAMINATION

By Mr. Green:

Q. Mr. Riley, would you state your age for the record?

[50] A. Fifty-four years old.

Q. And are you married, sir?

A. Yes, sir.

Q. Do you support any dependents under the age of 18?

A. No, sir. They are all married.

Q. Would you state for the record, sir, your former occupation?

A. Sheet metal worker.

Q. And what local did you work out of, sir?

A. Local 102.

Q. Mr. Riley, would you agree with Mr. Sutherland's statement concerning the occupation of a sheet metal worker, what it entails?

A. Yes, sir.

Q. Would you like to add anything to that description, sir?

A. Well, general sheet metal work is anything that contains anything up to the gauge of ten gauge, and just like you said, it varies by weight, different weights and different types of work—paneling, anything that contains the sheet metal work.

Q. Mr. Riley, I would like to direct your attention, if I could, to the date of your injury, November 19, 1975, and I would like to ask you, sir, for the record, where were you working on that day.

A. Walter Reed Hospital.

[51] Q. And who were you working for, sir?

A. Federal Sheet Metal.

Q. Do you recall how long you had been working for them at this job site?

A. Approximately three weeks to a month.

Q. All right, sir. And on that day, sir, what was the task that you were given to do?

A. We were erecting the duct work and hoisting it into the trapeze hangers for positioning. This was starting out from a machine room, which consisted of five lines coming out at three different levels, and on the three levels that carried the duct work was angle iron; you may have one above and two in the second tier and one in the bottom tier —it varied.

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[55] By Mr. Green:

Q. Could you describe for His Honor what happened to you that caused an injury to your neck on November 19, 1975?

A. Well, we were putting the duct work into position, which after we put the duct work into position, we have to tighten up the bolts and all in order to have a permanent setting for them; it is a starting line of the future duct work coming off of it. So, after we had moved the duct work

in the bottom position into the trapeze, I was proceeding to go up on the second level to tighten up the nuts and setting up the other [56] angle irons on the duct work above.

And when I proceeded to get up to the second level, that is when I struck my neck on the bottom corner of the lower duct work. I fell back on the first level and seen stars, knocking my hard hat off and knocking me back on my knees on the first level of the scaffolding, and then I sat down. I sat there for a while, gathered myself, and that's when Howard asked me—he said, "How do you feel?" And I said, "Boy, I got a rap that time." So, he says, "Can you get down off the scaffold?" I said, "If you will hold the ladder, I'll try to get down off the scaffold."

So, I go down off the scaffold, and we had this heavy iron duct work around the scaffolding, and I sat down on that to gather myself. And he proceeded to gather the tools and the lines and the electric equipment, and stuff like that, and he let me sit there while he gathered the tools up.

Q. You had had problems with your neck before, hadn't you, sir?

A. They diagnosed cervical arthritis back in 1970.

Q. That cervical arthritis, had it caused you reason to give complaint to pain in any portion of your body prior to this injury?

A. It was more like a rheumatism, and I treated it with the medication that I had at different times as rheumatism.

Q. Was there any medication you were taking the day of [57] your injury for arthritis?

A. Indocin; I had some Indocin, so I took a capsule of Indocin.

Q. You took a capsule that day, sir?

A. After the injury.

Q. All right. Who prescribed the Indocin for you?

A. Dr. Wisotsky.

Q. And you have been taking it for several years, is that correct?

A. Just off and on. I used different types, different types of medication.

MR. GALIHER: I would like the record to have the spelling of Dr. Wisotsky from the very beginning, so we can have that correct. It's W-i-s-o-t-s-k-y.

MR. GREEN: That is correct.

By MR. GREEN:

Q. Mr. Riley, after you took the Indocin that day, what did you then do, sir?

A. That evening, just before we left—of course, Howard, he drove.

Q. Do you remember what time you left, sir?

A. Practically everyone had racked up and he was still getting the lines up and locked in the tool box.

Q. When you say "racked up"—excuse me, Mr. Riley—when you say "racked up," sir, what do you mean?

[58] A. Everyone had pretty well cleaned up all the areas and most of the men on the job were gone. They give you five minutes—you can leave, you can come down the ramp at, let's say, five to 4:00. During that time, I don't know whether we were working 7:00 to 3:30 or whether it was 7:30 to 4:00.

MR. GALIHER: For the record, I will stipulate it was 7:00 to 3:30, according to our records.

THE WITNESS: Okay. Well, they changed it because of the traffic situation.

By MR. GREEN:

Q. All right, sir. After you racked up, you indicated that Howard was driving.

A. That is right.

Q. Where did you proceed to, sir?

JUDGE GERSHUNY: Howard, being Howard Sutherland?

The WITNESS: Howard Sutherland.

By MR. GREEN:

Q. Where did you proceed to?

A. We drove to Howard's place. That is where I had my vehicle parked. So, he asked me how bad I was, and said that I didn't feel too good, so I said, "Drive me home." So, he drove me home, and when I got home, my boy was there, and Howard took my boy back to his place and picked my truck up and brought it home.

Q. All right, sir. Since the time of the impact with [59] the duct work, what problem or pain had you been experiencing, if any, sir?

A. None, none, really.

Q. And why was that?

A. Well, I had worked with it for five years and, occasionally, would take medication and continue to work; I never lost any amount of time—very, very little.

Q. Was there anything about this day and this injury that was different than the prior pain you had experienced?

A. Yes, that was the worst; that was the worst hurt I ever had.

Q. Could you explain to His Honor why it was worse?

A. Well, up to the point when I went home, I had these pains in my chest and my shoulders and arms, steady pain. So, I took another capsule.

Q. Let me stop you, Mr. Riley. That steady pain was different than prior arthritis problems you had experienced?

A. Oh, yes; oh, yes, very, very much so; very, very much so.

Q. All right. Could you describe for His Honor where the pain ran?

A. From my neck up to the back of my head, down my arms, and through my chest (indicating).

Q. Did the pain extent to your hands or your fingers?

A. Oh, yes, clear down.

[60] Q. Did the pain extend below the mid line of the lower back?

A. No; it was mostly up in my upper part of my body.

Q. Was it also up in the upper part of your thoracic or your chest area, sir?

A. Yes, sir.

Q. And that was different?

A. That was different.

Q. Did the Indocin cause the pain to stop at all?

A. That it very temporary; not really; it wasn't really strong enough. It was a very mild Indocin; it wasn't no powerful grain of Indocin.

Q. Do you remember what it might have been?

A. Offhand, it was probably the lightest grain Indocin that they have.

JUDGE GERSHUNY: Could we have a spelling for the drug?

MR. GALIHER: I-n-d-o-c-i-n.

MR. GREEN: I will agree with the spelling.

JUDGE GERSHUNY: Thank you.

By MR. GREEN:

Q. Mr. Riley, you remained at home and your boy brought the truck back, the car back?

A. He drove up with Howard and then he brought the truck back.

[61] Q. Could you describe for His Honor what happened the remainder of that day?

A. Well, it was pretty late in the evening and I went to bed; couldn't eat.

Q. What time did you normally retire, sir?

A. Ordinarily, I retired—working like that, I retired about 9:00, ordinarily.

Q. All right, sir.

A. This time, I went to bed about 7:30, 8:00.

Q. What happened then, sir?

A. Well, this extreme pain woke me about 2:30 in the morning. So, I got up, came out in the kitchen——

Q. Excuse me, Mr. Riley. Where was the pain localized?

A. In my arms, my neck, and my chest was tight as a drum; I could hardly breathe.

So, I come out in the kitchen and got a glass of water, and the pain got so bad that I went back and I woke the wife up and I told her about the pain, which I had told her the evening before that. I said, "This is horrible; I can't stand it." So, she drove me to La Plata Hospital, about 13 miles away. And when I got to the hospital, they put me in a holding room, and right away, with my chest pains, they started a cardiogram; my pressure was up.

They held me in the holding room. A cardiologist come on duty—I don't know what time; he was there in the hospital [62] at the time on another emergency treatment. And she give them the family history, which had a little heart problems. So, by doing so and the symptoms that I had and I could hardly breathe, he prepared me for intensive care. He was interested more in that for the protection of me, to get me into intensive care.

Q. Had you ever had any prior heart problems?

A. No.

Q. But there was a history in your family?
A. In the family.

Q. Please go ahead.
A. Then, they put me in intensive care and they wired me up and they monitored me for three days. They administered morphine because the pain was so great. I was still complaining of my neck, my arms and chest. Morphine and valium were used as muscle relaxer. They monitored me for three days, which was all taken clear into the Washington Hospital; from La Plata, it was wired to Washington Hospital Center.

So, on the third day—I had had no visitors—on the third day, the doctor called in—he had talked to me, I will say, probably the second day, and I referred to him about the injury and my arthritis problem—he called in an orthopedic surgeon, which was Dr. Sanchez. They prepared me for X-rays; they took me into the next room, the pre-intensive care room, and he ordered a straight traction.

Q. This was Dr. Sanchez?
[63] A. Dr. Sanchez ordered the straight traction. So, he come in and, of course, took down the history related back, if I ever had any problems back through the times. And I was still administered muscle relaxers, and they kept me in traction for about a day and a half. The pain was so great that they had to take the straight traction off my neck.

Q. Was this pain, Mr. Riley, that you were experiencing the same pain that you experienced that evening in your home, sir?
A. Yes, sir.

Q. And where was the pain localized at that time in the hospital?
A. At that time, it was more so in my neck and my shoulders and arms. The muscle relaxers were taking hold, and they were administered every four hours and kept me pretty well drugged.

Q. Do you have a recollection, even though you were on medication—do you have a recollection now whether or not your chest tightness eased?

A. The chest tightness did ease, because the muscle relaxers are supposed to do that, because it signals the back to release your muscles; that is what they were working on.

Q. All right, sir. When you gave Dr. Sanchez—and for the record, that is S-a-n-c-h-e-z—when you gave Dr. Sanchez your prior history, was there in your prior history any other problems with your cervical spine, your back from any [64] injury, sir?

A. No. It just related back—he said, "Go back. Did you ever have any injury to your neck, specific injuries? Go back as far as, say, 30 years." So, I said the only real instance that I could think of is when I fell off a horse and when I was in the military, and that was 30-some years, and that is how that entered into the record.

Q. You were in the Marines, sir?

A. In the Marine Corps, horse Marines.

Q. And where were you injured when you fell off the horse?

A. Indian Head—it was called the Powder Factory at the time. We rode patrol, 5-R on the horses.

Q. What part of your body was hurt?

A. I had a brush burn on my back. We wore those big sheepskin coats and, of course, the big collar protected my neck. The saddle come loose; the stable mate must not have tightened the cinch up, and the cinch came loose—they had the old cavalry saddles—and when I went down, my foot hooked into the stirrup, and it was a gravel road, and the horse dragged me along the gravel road. The big sheepskin collar protected my neck, but it pulled up—I had a pistol belt on it—it drug me coat up, and what I wound up with was a big brush burn on the lower part of my back.

Q. Any other injury besides the brush burn?
[65] A. No.

Q. In 1969, you had another injury, is that correct, to your shoulder?
A. That is right.

Q. Could you tell us how you occasioned that injury, sir?
A. Well, I fell back off—there was a short ladder, and I fell back against a concrete wall. We were putting a riser duct in. And by doing so, there was a little tumor that had raised up, a soft tumor.

Q. Could you tell His Honor where that was located?
A. It was on my left shoulder.

Q. Where on the left shoulder, sir?
A. The bottom of my shoulder blade.

Q. Was there any problem with regard to your neck and back from that injury?
A. No.

JUDGE GERSHUNY: What was the date of that injury?

THE WITNESS: '69. Let's see——

JUDGE GERSHUNY: Well, that is okay.

By MR. GREEN:

Q. Mr. Riley, you have made an effort, sir, to recollect any injury at all to your back and your neck. Is there any other injury to your back or your neck other than this injury at work?
A. No other injury. That's why when Dr. Sanchez asked [66] me—he said to go back that length of time, any previous.

Q. And you did, sir?
A. Yes, sir.

Q. Did the 1969 shoulder injury limit your work activity at all?

A. No, sir. They just removed the soft tumor.

Q. Were you told to stay off work because of the soft tumor?

A. Just during the time that they took to operate and when they took the stitches out, approximately a week and a half or two weeks.

Q. When you cracked your ribs, sir, at work—do you recall that injury?

A. Yes, sir.

Q. Did you lose any time?

A. A couple of days, and then they gave me one of those rib vests, like; they don't tape you; they use the rib vests. It was a no lost time accident.

Q. You continued to work?

A. Yes, sir.

Q. After Dr. Sanchez put you in the hospital with cervical traction, what was the result of that treatment, sir?

A. He released me on that straight traction, and he sent me up for physical therapy, which was intermediate traction, hotpacks, and ultrasound. Then, about a month later, it got [67] pretty bad, so he had to administer nerve blocks in my neck and shoulders.

During the time I was taking this treatment, it wasn't responding to the regular medication. So, that is when the doctors recommended me for retirement.

Q. Just stop there for a second, Mr. Riley. Who suggested that you retire from your occupation, sir?

A. Dr. Sanchez and Dr. Wisotsky.

Q. Did they give you a reason why they felt you should retire?

A. Yes, sir. The injury left me with limited use movement of my neck, my arms and shoulder, arm palsy and numbness.

Q. Is it true, sir, that those doctors reported their medical opinion to your union pension fund?

A. Yes, sir.

Q. Did they do so voluntarily?

A. Yes, sir.

Q. From the time you were injured, sir, when is the first time you reported—you reported—this injury to your employer?

A. I didn't hear a thing from—it was about three weeks after the injury, maybe three or four weeks after the injury that the BA called me.

Q. Who is the BA, sir?

A. That was Mr. Bettis. He is not the BA now; he was the [68] BA then.

JUDGE GERSHUNY: That's the business agent of the union?

THE WITNESS: Yes, the business agent. And he asked me when I was coming back to work, and I said, "I'm still under a doctor's care," and I said, "I'm waiting to hear from the carrier, from the insurance company." I said that the accident report was filed, and I said, "Would you call out there and find out who the carrier is?"

So, he called out to find out who the carrier was, and he called me back and told me.

By MR. GREEN:

Q. Who did he say it was, sir?

A. It was North America. And he gave me the address. I said that the accident report was filed. Well, that is the only time I talked to him. Then, a week later, I figured—I didn't hear any more word, so that is when I figured I

needed some legal counseling. And that is when I called Howard and asked him to drive me down to your office, and I made an appointment with you to find out where these reports were and why I wasn't getting any response from the insurance company.

Q. Did you have occasion, sir, after seeing me in my office—and I believe that you saw me in my office on December 16th 1975—did you have occasion, sir, to talk with your business agent again about the status of the report on your [69] injury?

A. Yes, sir. I called the BA in order to put him on notice that I was filing against them because I had not heard from the insurance company, or even the company—never made an attempt to find out what the story was.

JUDGE GERSHUNY: I'm not sure I understand what that meant.

MR. GALIHER: Your Honor, I would like the record to be clear, preliminarily, to that. The business agents works for the union. Now, I think that should be clarified.

MR. GREEN: I think Mr. Galiher is free to clarify that, Your Honor, and he, in fact, has.

JUDGE GERSHUNY: Well, at this point in time, would you just expand upon it? He made a reference that he called his business agent to put him on notice of what?

By MR. GREEN:

Q. Mr. Riley, pursuant to your union regulations and pursuant to custom and practice in this locality, when a man is injured, sir, and does not hear from his employer, is it general practice to contact his business agent?

A. Yes, sir. He represents every member of that local.

Q. All right, sir. Did you direct your business agent to act in your behalf pursuant to any collective bargaining agreement by reporting an injury to Federal Sheet Metal or checking on the status of your injury report?

[70] A. Yes, sir.

Q. And did he do that, sir?

A. Yes, sir.

JUDGE GERSHUNY: What is his name?

THE WITNESS: The business agent at that time was Mr. Killin.

MR. GREEN: That is James Killin, K-i-l-l-i-n.

By MR. GREEN:

Q. Is that correct, sir.

A. Yes, sir.

Q. And, in addition, with again checking with your business agent, did you report the injury to your foreman at that time?

A. Well, I would never talk to the foreman. The BA, he notified the superintendent on the job.

Q. All right, sir. But my question was, did you report the injury to your foreman.

A. Not to the foreman; Howard reported it to the foreman.

Q. Do you know who your foreman was at that time?

A. At the time of the injury—at that date, time, we was brought up onto the fifth floor to work those few days, and I did not know the foreman's name. Later, they said it was a fellow by the name of Baren. But he had men bring the duct work over there and the drawings over, and I may have seen him in three days, I may have seen in one, and then I wouldn't have [71] known him.

But our foreman was Mr. Fury, and he carried our names in the book.

Q. Was it practice on that job with Federal Sheet Metal to move you around from one foreman to another?

A. Yes, and they didn't move the names from the book, because, sometimes, we would go right back to the original

foreman. So, we, actually, spent more time with Mr. Fury than we did with anyone on that job.

Q. And, again, so that we can follow from where you were before, you asked our law firm to represent you in a claim, is that correct, sir, in December?

A. Yes, sir.

Q. And we, at your request, filed claim forms on December 29th, 1975 with the Department of Labor?

A. Yes, sir.

JUDGE GERSHUNY: Are you going to offer those claim forms?

MR. GREEN: Your Honor, if I cannot get a stipulation to the effect, I will, but I would rather keep the exhibits to a minimum, if we can, for the purposes of the record.

MR. GALIHER: I think they should be offered, showing the date that the claim was filed, and so forth.

MR. GREEN: You don't have that in your possession?

MR. GALIHER: I don't know.

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[73] MR. GREEN: That as well, sir; especially that. And I would mark that as Claimant's 2 for identification, and I will show that to Mr. Galiher. (Handing document.)

(Whereupon, the document was marked Claimant's Exhibit No. 2 for identification.)

JUDGE GERSHUNY: For the record, would you state what that is and what the date of it is?

MR. GREEN: Yes, Your Honor. It is a claim form prepared by our office dated as received by the Department of Labor, District 40, December 20th, at 12:15 p.m., 1975.

JUDGE GERSHUNY: Thank you. Are you offering it?

MR. GREEN: I am offering it at this time, Your Honor.

JUDGE GERSHUNY: Mr. Galiher?

MR. GALIHER: No objection, Your Honor.

JUDGE GERSHUNY: All right. Claimant's Exhibit 2 is admitted.

(Whereupon, Claimant's Exhibit No. 2 was received in evidence.)

By MR. GREEN:

Q. Mr. Riley, do you have a recollection of you being contacted by the Insurance Company of North America with regard to this injury?

A. The first notice that I received was a letter of a description to fill out of the injury, which was approximately [74] May or June of '76.

Q. As far as you know?

A. As far as I know.

Q. And did you complete that claim form?

A. Yes, sir.

Q. Did you return it to INA?

A. Yes, sir.

Q. Did you hear from them again with regard to your claim?

A. No.

Q. Have you ever received any workmen's compensation benefits as a result of your injury of November 19, 1975, to date?

A. No, sir.

Q. Have you applied for Social Security disability benefits?

A. Yes, sir.

Q. Are you presently receiving a pension disability from your local union?

A. Yes, sir.

Q. Mr. Riley, you have testified that you worked with your cervical arthritis condition; ever since it was diagnosed, you continued to work with it.

A. Yes, sir.

Q. Do you feel that your condition, sir, has in any way [75] interfered with your working ability as a sheet metal worker until the injury of November 19, 1975?

A. No, sir.

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[84] Q. You said that you have had to restrict your activity. Could you indicate to His Honor how you have restricted your activity, sir?

A. I can't push, pull, lift in very moderate activities, because the therapist says when they give me this therapy, any quick movements of my neck, and the arm palsy, which causes the muscles to tighten up, and the numbness—signals from the [85] spine, that is what causes all of that, and I would only damage it more than what it was; it is a deterioration.

Q. Have you limited any physical activity other than pushing or pulling for example, driving a car, going for walks?

A. Walks—I exercise my walking. And as far as driving, very little, because when you hold a steering wheel, you are putting stress on the nerves and it signals back to your spine, and that is what tightens up, which causes the arm palsy, and that is very limited.

Q. What medication are you presently taking, Mr. Riley?

A. Motrin.

Q. Anything other than Mootrin, sir?

A. And the valium, in order to sleep at night, which with the pressure on my spine, my arms go to sleep, go numb.

Q. How often does that occur, sir?

A. All the time. The medicine is only temporary.

Q. Does any particular activity occasion the arms going to sleep?

A. Oh, yes. Anytime that I put any amount of stress on them, or even just like driving an automobile; when you are gripping the steering wheel, anytime you grip anything that is when you get the numbness and the tingling back into your neck, where it signals out—that is the way he explained it—that the nerves are signaling for the muscles to tighten up, and that it what causes the palsy.

[86] Q. Beyond driving the car, pushing and pulling in other activities, is there any other activity that this injury to your neck has caused you to refrain from, sir?

A. Well, I just can't do anything, even minor—I tried to do even some minor yard work, and I landed in the hospital, and I was in straight traction in the hospital for 11 days in the spring of '77 by just picking a bag of mulch, sliding a bag of mulch off a wheelbarrow. And I asked them. I said, "Well, why was that?" He said, "That is putting"——

MR. GALIHER: Objection.

JUDGE GERSHUNY: You may answer.

THE WITNESS: Beg your pardon?

JUDGE GERSHUNY: You may answer.

THE WITNESS: He said, "That is putting the stress on it," and that I was favoring my neck. And by favoring my neck, it is putting more strain on my lower back section.

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[88] CROSS-EXAMINATION

By MR. GALIHER:

Q. Mr. Riley, when you had your injury in 1969, did you report it to your employer?

A. Yes.

Q. How did you do that?
A. Well, I called them by telephone.

Q. And was that within several days after the injury occurred?
[89] A. No. Actually, I went to the compensation doctor, stopped by a compensation——

Q. Compensation clinic?
A. Clinic, clinic.

Q. And did you report it after you had been to see them, is that how it worked?
A. That's the way it went from there.

Q. You are aware that there is a requirement under the law to report an injury when it happens to your employer?
A. Yes, sir.

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[92] Q. How often since the year 1970, up until the year 1975, did you go to see Dr. Wisotsky for your neck problem and your shoulder problems?
A. Very little; it was mostly for, say, general health. I had a cholestrol problem and he monitored my weight, and he would issue me some arthritis pills.

Q. Who gave you the Indocin that you have been taking since 1970?
A. I haven't taken Indocin since 1970; I have taken differrent medications.

Q. Who prescribed those medications?
A. Dr. Wisotsky.

Q. Now, you say on the day this injury occurred that you had Indocin in your pocket.
A. I carried it in my tool box.

Q. And had you been taking Indocin before this injury?
A. No. I treated it just like I had a rheumatism.

Q. Well, had you been taking Indocin, then, on a regular basis?

A. No, not on a regular basis. All that Indocin is—it is a pain killer.

Q. Well, how often, let's say, within the year before November of 1975, had you taken Indocin?

[93] A. Oh. Occasionally, maybe six months—oh, off and on. Sometimes, I used just a Bufferin on an Anacin.

Q. Well, would your taking of the Indocin depend upon whether you, for example, were working in wet weather or damp weather; would that bring on some symptoms that would cause you to take Indocin?

A. It would be more like a rheumatism.

Q. Okay. Would the weather cause you to have symptoms that would then require you to take the Indocin?

A. I don't know. I guess it has a certain amount of factor to it.

Q. Now, on the day that this incident happened, you have shown us the scaffold and you have indicated that you were trying to go up to the upper level. Now, you had placed this duct that you struck up in the ceiling in the first instance, had you not?

A. Yes, sir.

Q. And had you done it that same day?

A. Yes, sir.

Q. And were the duct jacks still holding it up in the ceiling, or had they been removed because of the trapeze situation?

A. That's right; it was removed, so we could push our scaffold underneath it to do the adjustment.

Q. Now, had you ever climbed from the lower scaffold to [94] the upper scaffold before the time that you climbed up this particular time and struck your neck?

A. Many times.

Q. Why is it that this particular time you struck your neck, as opposed to not having struck it any of those other periods of time?

A. It could have been the way the positioning of the scaffolding was—in reference, underneath the duct work. I have worked on scaffolding all through my time from different levels; some have three different levels that you climb up.

Q. Well, did you realize when you were climbing up from the lower to the upper level that that duct work was, in fact, there?

A. Definitely, it was there.

Q. Well, did you realize it?

A. That the duct was there?

Q. Yes.

A. Definitely; I was working on it.

Q. Well, how is it that—did you slip, or something like that, as you went up to get to the upper level, and is that what caused you to come back against the duct work?

A. I must have lost my balance to a certain extent.

Q. Had that not happened, you would have been able to clear it as you had on other occasions?

A. I would say.

[95] Q. Was there enough head room, except for that, for you to move from the lower scaffold to the upper scaffold?

A. I would say so.

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[97] Q. Who was your main foreman?

A. Fury.

Q. Fury?

A. Yes. He is the one that carried our names in the book.

Q. Now, what about Mr. Fred Gunnell; what connection was he to this job?

A. I don't even know the man; when you brought him the last time, I didn't know him. The name don't ring a bell.

Q. Now, when you called—strike that. When you were taken to the hospital at La Plata, were you conscious when you went in the hospital?

A. My wife drove me.

Q. Okay. When you went into the hospital, did they ask you what happened, and so forth?

A. I was in so much pain that my wife did most of the answering of the questions. They were interested in my history, what was causing it, and this is why they brought the cardiologist down who was there on another emergency case—he happened to be in the hospital; he is the chief cardiologist in La Plata Hospital.

Q. When you got home on November 19th, did you tell your wife that you had suffered an injury at work?

[98] A. Yes, sir. I told her I hit my neck on the duct.

MR. GALIHER: Can I see Claimant's Exhibit Number 1, Your Honor, please?

JUDGE GERSHUNY: Claimant's Exhibit Number 1 is on——

MR. GALIHER: The claim form; this is what I need.

JUDGE GERSHUNY: That's Number 2.

MR. GALIHER: All right. Claimant's Number 2.

By MR. GALIHER:

Q. Is this your signature, Mr. Riley? I am showing you what has been marked as Claimant's Exhibit Number 2.

A. Yes, sir.

Q. On this claim form that you signed when you met with Mr. Green, this, presumably, was signed somewhere around the date it was filed, which was December 29th, 1975. This

says as follows, quote: "The accident occurred when I was lifting duct work weighing approximately 500 pounds and felt sharp pain in neck," period, end quote.

Did you tell your attorney at that time that you had, in fact, struck your neck against the duct work?

A. It was a general type of work we were doing at the time, exactly what I told on that report of the doctor's. It was a generalization of what I was doing when it hit, when I hit my neck.

Q. Well, why was it——

A. See, I've got to explain this here.

[99] Q. Yes, I would like you to explain that. I'll phrase it with a question.

Why didn't you say in that claim form that you had struck your neck against the duct work, as you and Mr. Sutherland have testified here today?

A. That's exactly what it was, and then when I filed your form out in the spring of the year, I had put that into the description.

Q. You did.

MR. GALIHER: I would like this form to be marked as Employer's Exhibit B.

(Whereupon, the document was marked Respondents' Exhibit No. B for identification.)

JUDGE GERSHUNY: For the record, would you just indicate generally what that is.

MR. GALIHER: Okay. Your Honor, this is an Insurance Company of North America form for a workmen's compensation claim; it is signed by Mr. Riley, dated 16 July, 1976.

JUDGE GERSHUNY: July——

MR. GALIHER: 16, '76. I would like it to be marked as Exhibit B, and I will ask Mr. Riley to identify it and his

signature, and the fact that this is probably his writing, and so forth, on the form.

By Mr. Galiher:

[100] Q. Mr. Riley, is that the form you filed out that you are talking about in your previous testimony a minute ago?

A. Yes. See, this covered the general——

Judge Gershuny: Yes or no? I didn't understand the answer. Yes?

By Mr. Galiher:

Q. Just yes or no. Is that the form we are talking about, sir?

A. Yes, sir.

Q. Okay. And does that bear your signature?

A. Yes, sir.

Mr. Galiher: Fine. I would move that into evidence at this time.

Mr. Green: I have no objection, Your Honor.

Judge Gershuny: Okay. Respondents' Exhibit B will be admitted.

(Whereupon, Respondents' Exhibit No. B was received in evidence.)

By Mr. Galiher:

Q. Now——

Judge Gershuny: Would you just wait for one moment, please, and let me look at this? (Perusing document.)

By Mr. Galiher:

Q. Now, Mr. Riley, when you got to the hospital, you say that—can you tell me whether it was your wife that

told them [101] what had happened, or was it you that told them what happened?

A. All she gave them was the family history.

Q. Now, she knew at the time that you were admitted to the hospital, of course, that you had had this injury, because you had told her?

A. That's right.

* * * * * * * * * *

[108] By Mr. Galiher:

Q. Now, Dr. Sanchez first saw you in the hospital several days later, was it?

A. When Dr. Burke called for an orthopedic surgeon; three days.

Q. Okay, Now, when you first saw him, did you tell him about your injury to your neck?

A. Yes, sir.

Q. And did you also tell him that you had forgotten about telling the hospital about it on your original admission?

A. I think I did; I think I mentioned it. I was in straight traction then and pretty well hopped up. I think I did.

Q. Now, Dr. Burke is listed as the treating physician for you in the hospital. Had he ever treated you before you were hospitalized?

A. No, sir.

Q. Did Dr. Wisotsky treat you in the hospital at all?

A. No, sir.

Q. Not at all?

A. No, sir.

[109] Q. And you never saw him until after you got out of the hospital?

A. That's right. My record was forwarded from Dr. Burke to Dr. Wisotsky.

Q. Now, was that letter that I showed you that you signed for INA the first time you had ever written anything about this accident to INA?

A. INA?

Q. Yes.

A. Who is INA?

Q. To the insurance company, Insurance Company of North America.

JUDGE GERSHUNY: Why don't you show him the form? It is not a letter; it is a form. I think he may not understand what you are referring to. It is Respondents' Exhibit B.

By MR. GALIHER:

Q. Let me show you what has been marked as B, and ask if that is the first time you ever wrote anything to INA about how this injury occurred.

A. (Perusing document.) Yes, sir.

Q. Now, did you ever, yourself, personally, while you were in the hospital or after you got out of the hospital, call anybody connected with the Federal Sheet Metal to report your neck injury?

A. No. The understanding was that Howard Sutherland took [110] care of it. And during the time I got out of the hospital, I was restricted, really, house-bound, because of the medication I was taking, and it wasn't until about a month later—that I wasn't hearing anything from this—when I heard from the business agent, and he asked me when I was coming back to work. And to my surprise—I told him, "Why are you asking me if I am coming back to work, because I was injured on the job and I am waiting for Federal Sheet Metal or the insurance carrier in order to get in touch with me because I was under a doctor's care."

Q. Now, let me go into that a little bit. The business agent of the union——

A. That's right.

Q. —called you on the phone. You didn't call him?

A. No, sir. First of all, Blackie, the superintendent——

Q. Who?

A. —from Federal Sheet Metal——

Q. Blackie is who—Fury?

A. No, no. He is the general superintendent; Blackie Brandsfield. He called the business agent and the business agent, in turn, called me.

Q. Okay. So, he called the business agent and asked when you were coming back. Then, the business agent called you.

A. That's right.

Q. So, it is obvious, then, that neither Blackie nor the [111] business agent knew that you had been injured.

A. That's why—the injury, as far as I knew, was reported, and that's what surprised me.

Q. Well, you felt that it had been reported by your friend Howard Sutherland.

A. That's right. And he told me that he reported it.

Q. When did he tell you that he had reported it? I mean, when did you first have a discussion with him about the manner in which he reported the injury and who he reported to, and so forth?

A. I'll say about a week after that; about a week after I heard from the BA, I called him, and that's when I asked him about the injury and if he reported it, and he said, Yes." And I said, "Well, I haven't heard anything from the insurance company, and the only word I got about anything was from the BA." And that is when I asked him to drive me downtown to seek counsel.

Q. Did Mr. Sutherland advise you who he had reported it to?

A. He said to our foreman, who was Fury.

Q. And did he tell you when he had reported it?

A. The next day he went to work.

Q. And did you get the impression that that was the day after this incident occurred?

A. Yes, sir.

[112] Q. Were you aware whether, after you went off the job, Mr. Sutherland ever worked for Federal Sheet Metal again?

A. You mean, after what?

Q. After you had been put in the hospital on the 20th. Did you ever in your conversations with Mr. Sutherland become aware that he had gone back to Walter Reed Hospital and worked one, two, three, four days?

A. Yes. He said he had stayed out there for about a—I understood for about a week, and then he left. And the reason why he left, he said, was the drive.

Q. When the business agent had this conversation from you and you told him that you were trying to find out about the injury, then did he indicate that you should do something, or was he going to do something about it at that point in time?

A. That's when I asked him about the carrier, and then he, in turn, returned a call to the superintendent and got the carrier's name, because I was surprised that I didn't hear a word.

JUDGE GERSHUNY: Is the record clear, Mr. Galiher, when this conversation occurred?

MR. GALIHER: No, it is not, Your Honor.

JUDGE GERSHUNY: I think it might be helpful if you would clarify that.

MR. GALIHER: I was coming to that.

By Mr. Galiher:

[113] Q. Could you tell us when this conversation took place?

A. I would say it was about December 12th or 15th.

Judge Gershuny: It was prior to the time that you met with your lawyer?

The Witness: Yes, sir.

Judge Gershuny: Thank you.

By Mr. Galiher:

Q. Is Killin, K-i-l-l-i-n, the man you talked to?

A. That's right.

Q. And Mr. Killin, the business agent, then advised you to seek counsel at that time?

A. No. That was after I seen counsel.

Q. Well, wait a minute. We are trying to clear up that right now. Was it before or after you saw Mr. Green that the business agent first called you?

A. Oh, no, no, no. Now, you see, you've got two different business agents.

Q. Oh, okay. Well, that is what is unclear. Do you want to clear us up on that?

A. I told you. Jim Bettis is—we have three business agents. Jim Bettis is the one that called me about the 12th or 15th of December.

Q. Okay. And he called back and said INA was the carrier?

A. That's right. I wanted the info——

Q. And where did Mr. Killin come in?

[114] A. —to give to the doctor.

Q. Okay. Where did Mr. Killin come in?

A. Then, after I didn't hear no word, the doctor submitted the—I asked the doctor to submit the report; I was

going through physical therapy at the time, and I asked him if they had heard anything. That was in December, when I was going through physical therapy.

Q. And you asked them to submit a report to INA?
A. That's right.

Q. And then, did there come a time that he advised you that he had submitted a report to INA?
A. Yes, sir.

Q. Do you know if—strike that.

MR. GALIHER: That is all I have at this point, consistent with the liability.

JUDGE GERSHUNY: I have one or two questions just so the record will be clear.

Mr. Riley, was this duct work round duct or was it square duct work?

THE WITNESS: It was rectangle; some square, some rectangle, some had round ends on it; it changed from different sizes.

JUDGE GERSHUNY: And how high above the top level of this scaffold that you were trying to go up on—how much higher than that was the bottom of the duct work that you hit [115] your——

THE WITNESS: From the top level?

JUDGE GERSHUNY: Yes.

THE WITNESS: I would say approximately three foot, I guess; it was about three foot from the first level to the second level, and about three foot from there up to the bottom of the big duct.

JUDGE GERSHUNY: And what were you going to do when you got up to the top level?

THE WITNESS: We were going to make adjustments. You had three sets of trapeze that was carrying these three sets

of lines that had five lines in them. When these long all-thread rods came down, you had to set nuts on them, and that would bring us up to elevation; we had elevations to maintain and measurements from our measurements columns, from our measuring line. Then, we would have to set them into position and lock them in so that they wouldn't move, so that whoever run the duct work from there, that would be the starting point; that would be what they called the cut line, but that line stayed, because it was all drafted out to fit exactly, and if it was back a couple of inches or forward a couple of inches, then it wouldn't hit your inserts right.

JUDGE GERSHUNY: What was your understanding as to what kind of notice of injury was required?

THE WITNESS: Within the 24 hours.

[116] JUDGE GERSHUNY: Was your understanding that it had to be oral or written?

THE WITNESS: No, just notify them that the injury took place.

JUDGE GERSHUNY: And what was the practice on these job sites as to who you would notify?

THE WITNESS: You would notify your foreman, and then he would make the report. He would carry the report from there to the superintendent's office.

JUDGE GERSHUNY: Mr. Green, do you have any further questions?

MR. GREEN: Based on yours?

JUDGE GERSHUNY: No; generally, on the issue of liability.

MR. GREEN: On the liability, yes, sir, I do.

## REDIRECT EXAMINATION

By Mr. Green:

Q. I show you what has been marked for identification as Claimant's 2. Do you recognize that claim form, sir?

A. Yes.

Q. You had completed a section of the claim form, which was then typed in, indicating that while you were lifting duct work weighing approximately 500 pounds—"felt sharp pain in neck." Is that correct, sir?

A. Yes.

[117] Q. You just testified in response to His Honor's question that your job occupation was, quote, "moving duct work," end quote.

A. That's right.

Q. Is that a general description, sir, that you use to describe your activity; that is, your general work activity?

A. That's right.

Q. I show you, sir, Respondents' Exhibit B, I believe, yes, B. And this form, you completed for INA insurance?

A. That's right.

Q. Would you read for the record what you have indicated where the question is asked on the form, "Describe fully the nature and extent of injury and how same was sustained"; what did you say, sir?

A. "Lifting sheet metal duct work with the shoulders into trapeze hangers, striking neck and shoulders on duct work, aggravating existing cervical arthritis."

Q. All right, sir. There, you had used the term "moving," is that correct?

A. Right, sir.

Q. "With shoulders"?

A. That's right.

Q. What did you mean by that, Mr. Riley?

A. That is after the duct work was in the trapeze; that is the way you got them in line. And after we got them in line, [118] I was going up into it to make a setting, the lock setting.

Q. Could you describe for His Honor how you physically make a setting, which is referred to as bulwark? [sic]

A. Well, after you get them into the racks, then two men, one on each side, have to lift one end and slide it—it depends on the weight of the duct, because you have no duct hoist; you have no duct hoist then; they are out—the scaffold is there; you are working off the scaffold. And you slide them into position; you have marked on your angle iron where you have to move them in. Sometimes, you even have to use a two-by-four, and all; something that you have to spring them into position.

Q. When you indicated on this form that you were moving with your shoulders, is that physically how you move angle iron weighing 500 pounds?

A. The duct work?

Q. Yes, sir.

A. Yes, sir.

Q. That is what you physically do?

A. After you get it into the hangers.

Q. All right, sir. What were you told—strike that. What information did you gain about Federal Sheet Metal's concern about where you were from your business agent; what did you understand their concern to be, sir?

Mr. Galiher: Objection. I am going to ask for a clarification of that question.

[119] Judge Gershuny: What is it that you are trying to show with this question?

Mr. Green: Your Honor, a proffer at this time would be this: If Federal Sheet Metal, the Employer, has knowledge

or an injury, or knowledge of an absence from work, and they initiate a contact to the business agent; he finds out what the problem is, reports it to them, then that may be an additional notice to the Employer of a work-related injury.

JUDGE GERSHUNY: I'm going to, I think, sustain the objection. I think it is a critical point. I think the business agent is here in town, and if you want to establish what the Respondents said to one of the two business agents, I think that you should establish it through them and not through this witness. It is really double or triple hearsay; I haven't figured it out yet.

By MR. GREEN:

Q. Mr. Riley, what did the business agent say to you, sir, when he called the first time?

A. He asked me when—Blackie Brandsfield had called him and asked him when I was going to return to work, whether they were going to hold my job open or not. And that is what really surprised me.

Q. What did you say to your business agent?

A. I said to the buseiness agent that I was waiting for the report from the insurance company or the contractor to find [120] out anything about the injury; that Howard had made the report on that day and I hadn't heard anything from them. And I said, "I'm still under a doctor's care. The doctor is submitting a report to send to the insurance company. I would like to know the carrier's name."

So, he, in turn, called out and got the carrier's name, and then recalled me. And that was the extent of the conversation.

Q. His name, again, sir?

A. Mr. Bettis.

Q. Is he still a business agent with the local?

A. No.

Q. Where is he now, sir?

A. He is in town.

Q. Is he retired from the local?

A. No.

Q. Do you know if he is still doing sheet metal work?

A. Yes, sir.

Q. Did you make a second call to a business agent?

A. The second call made to the business agent was to—I called for Jim Bettis, but he wasn't in, and then, Jimmy Killin, who is the other business agent, answered the phone—that was about a week or so later, and that is during the time that I called Howard to come down and that is when I come down to seek counsel. And I referred to him—to go on notice that [121] I was filing against Federal Sheet Metal for the injury.

And so, he called me back and verified it; that he called Blackie Brandsfield to go on record at that time. And that was the extent of that conversation.

Q. All right, sir. Did you have any reason to believe that Federal Sheet Metal was not on notice of your injury?

A. No; that is what surprised me.

Q. Have you ever had any reason to believe that Federal Sheet Metal was not on notice of your injury at work?

A. No, sir.

Mr. Galiher: Objection. I let the first question in. The second question—this is a legal matter at this point.

Judge Gershuny: Overruled. This is what is in his mind.

Mr. Green: Thank you, Your Honor.

The Witness: May I say something?

Mr. Green: All right, sir.

THE WITNESS: If I wouldn't have known that the accident was not reported, I would have not had the doctor—to get the information for the carrier—for the doctor to send the report directly to North America.

MR. GREEN: I have nothing further, Your Honor, based on cross or any of your questions.

JUDGE GERSHUNY: With regard to this phase?

[122] MR. GREEN: With regard to this phase alone.

MR. GALIHER: I have two other questions.

## RECROSS-EXAMINATION

By MR. GALIHER:

Q. Did you ever tell Dr. Sanchez, when you first saw him, that you had struck your neck against the duct work?

A. Yes, sir.

Q. Do you know why, in his report, which I think is A—is it A?

JUDGE GERSHUNY: It is Respondents' A.

By MR. GALIHER:

Q. Do you know why he says in his report that—referring to the paragraph at the bottom of the page—that you were doing stock work at Walter Reed Army Medical Center in 1975, moving duct work into position when you felt a pain at the base of your neck?

A. Well, that's where—we weren't doing stock work. What they meant was we were stacking duct, and that was in the racks. After I read that there—that was stacking, stacking duct in the racks.

Q. He doesn't say in this report that you had struck your neck against the duct work. He says that you were moving

the duct work into position when you felt pain at the base of your neck.

A. Well, he's writing and I am in traction.

[123] MR. GALIHER: Let me have this marked as Number ——.

JUDGE GERSHUNY: E.

(Whereupon, the document was marked Respondents' Exhibit No. E for identification.)

JUDGE GERSHUNY: Would you state what it is first, so we can have a clear record?

MR. GALIHER: This is LS-203 form, dated December 16th, 1975, bearing Mr. Green's signature, with a——

JUDGE GERSHUNY: What is the date, again? I'm sorry.

MR. GALIHER: December 16th, 1975. I don't know the date that it was filed at the Deputy Commissioner's Office; maybe I can find that out during lunch. This is the standard form of compensation. It is not signed by Mr. Riley, but I would like to ask him about it.

By MR. GALIHER:

Q. Mr. Riley, let me show you what has been marked as Exhibit Number E, and ask if you have ever seen that or have you ever signed a copy of a form similar to that form for Mr. Green.

A. (Perusing document.) It is a little different looking form! I don't think so, no.

JUDGE GERSHUNY: I don't think that you were heard by the reporter. Did you get what he said?

THE REPORTER: He said, "I don't think so, no."

[124] THE WITNESS: Is this the same form?

JUDGE GERSHUNY: Wait a minute; wait a minute.

By Mr. Galiher:

Q. I want to ask you if you have ever signed a form similar to that. That does not bear your signature, but have you ever seen that before?

A. I can't say.

Mr. Green: Your Honor?

Judge Gershuny. Yes, sir, Mr. Green?

Mr. Green: So that the record will not become any more unclear, since I have filed that form, it might be good if I proffer to the Court why it was filed and the time and place that it was filed and the reasons, under local regulation, District 40, why it was filed.

Judge Gershuny: When we recess for lunch, why don't you tell that to Mr. Galiher and perhaps you can stipulate as to what the document is.

Mr. Green: All right, sir.

Mr. Galiher: Fine. Well, we will just have that marked as the E number, and I won't move it into evidence until after I have discussed it with Mr. Green.

By Mr. Galiher:

Q. You have indicated that you never saw Dr. Wisotsky until after you got out of the hospital. Did you tell him, when you first saw him at that time, about this injury in November of [125] 1975?

A. Yes, sir.

Q. And that would have been, perhaps, January, maybe, February of 1976 that you saw him for the first time?

A. It would have been in December, sometime, I would say. Yes, it would have been in December.

Q. Okay. Did you ever have occasion to call, or request your wife to call him to see you while you were in the hospital?

A. No, no. See, he is a family doctor; he is a practitioner; who was handling me were specialists.

Q. Dr. Burke is what kind of a physician?

A. He is a cardiologist.

Q. Is he? Okay.

A. Sanchez is an orthopedic surgeon.

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[130]

**Austin Fred Gunnell, Jr.**

Q. Did you ever have occasion to talk to Mr. Fury at that same time?

A. Yes, I believe I did.

Q. Did you inquire of him whether or not he had received any accident report?

[131] A. I can't quite remember, to be honest with you. To be honest with you, I really don't know. I am being perfectly honest with you.

Q. But you never received an accident report?

A. No.

Q. Either from Mr. Sutherland or from Mr. Riley, directly or indirectly, is that right?

A. No; that is true.

Q. When you were contacted by Mr. Ferris about a possible accident that may have occurred, was there any indication given to you as to what type of an accident was being claimed, or anything like that, at that time?

A. I believe Mr. Ferris said something about he had hurt his shoulder lifting something, or to that effect. I believe that is what he told me.

Q. And that was what was being claimed at that time?

A. I believe that is what he told me at the time. He had developed some problems afterwards; he did tell me that.

* * * * * * * * * *

**Ralph Riley (continued)**

[180] By MR. GALIHER:

Q. Mr. Riley, can you tell us the date that you first requested retirement from the union, or requested a physician to write a report for you in connection with that retirement?

A. Dr. Sanchez recommended to Dr. Wisotsky that I couldn't perform anymore work, because it was a danger to me and it endangered anyone working on the job.

* * * * * * * * * *

[188] I would like to ask one other question on liability, Your Honor. It concerns the foreman situation. I would like to ask the question and then Your Honor can rule on, if there is an objection. I would like to ask him whom he felt that his foreman was at the time this injury occurred.

A. Fury.

Q. Mr. Fury was your foreman?

A. That is right. He paid us.

* * * * * * * * * *

By JUDGE GERSHUNY:

[197] Mr. Riley, you have worked on jobs as a foreman, haven't you?

THE WITNESS: Yes.

JUDGE GERSHUNY: Have you worked as a foreman frequently?

THE WITNESS: I would say average. Our of 26 years, I would say half and half.

JUDGE GERSHUNY: Is that based upon your seniority in the local?

THE WITNESS: No.

JUDGE GERSHUNY: While you have been foreman, have you ever received notices of accidents or injuries?

[198] THE WITNESS: Yes, sir.

JUDGE GERSHUNY: Is it a fairly uniform practice, regardless of which job site you are on, that the notice of injury is given to a foreman and then the foreman immediately notifies the superintendent?

THE WITNESS: Yes, sir.

JUDGE GERSHUNY: Did you specifically ask Mr. Sutherland to tell the foreman that you had been injured?

THE WITNESS: I was in intensive care. The only one he talked to that morning was my wife. They didn't give me no visitors.

JUDGE GERSHUNY: And you were in intensive care for several days?

THE WITNESS: That is right.

* * * * * * * * * *

**George Mistretta**

By MR. GREEN:

[203] Mr. Mistretta, would you please take the stand and wait to be sworn?

Whereupon,

GEORGE MISTRETTA

[204] was called for examination and, having been first duly sworn, was examined and testified as follows:

JUDGE GERSHUNY: Would you spell your last name, please, and would you state by whom you are employed?

THE WITNESS: M-I-S-T-R-E-T-T-A.

JUDGE GERSHUNY: By whom are you employed?

THE WITNESS: Office of Workers' Compensation Programs.

JUDGE GERSHUNY: That is with the U. S. Department of Labor?

THE WITNESS: That is right.

JUDGE GERSHUNY: You may proceed.

* * * * * * * * * * *

Q. In your course of duties as a Claims Examiner for the Department of Labor, were you assigned a file, OWCP Number 100376, concerning a Ralph Riley versus U. S. Industries/Federal Sheet Metal and Insurance Company of North America?

[205] A. Yes, sir.

Q. Mr. Mistretta, have you brought that file with you this morning?

A. Yes, sir.

Q. Is that file the official United States Department of Labor record?

A. Yes.

Q. You are not here pursuant to a subpoena, is that correct, sir?

A. Right.

Q. I would ask you, if you would, to review your file and, for purposes of this record, turn to the first indication in the official file of a claim being filed by Mr. Riley.

A. The first notice we had of Mr. Riley's claim was your letter dated December 29, 1975, and received in the Bureau office the same day. Attached to that letter—and a copy of that letter went to the Insurance Company of North America, 5225 Wisconsin Avenue, Washington, D. C.

Accompanying that letter is a retainer signed by Mr. Riley, which also engulfs a claim.

JUDGE GERSHUNY: What was the date of that letter?

THE WITNESS: December 29, 1975.

JUDGE GERSHUNY: Thank you.

By Mr. Green:

Q. All right, sir.

[206] What is the next information that your file contains with regard to this claim?

A. Let me give it to you in sequence.

When that came in, it was referred to our section where the files are made up, and I can't tell you when I got that back, but it was after the first of the year.

March 10, 1976, I wrote to the Insurance Company of North America, requesting they forward to us an Employer's First Report of Accident or Occupational Illness Form, and Attending Physician Form, Notice of Compensation to be Paid Without Award Form, 208 Form, Final Payment; then Form 210, which is a Supplemental Report as to when the man was able to return to work, or when the compensation was terminated, if paid.

I received no reply, and on May 20 I again wrote the Insurance Company, requesting the same information, and on the letter itself, or the form, as I remember, I put "second request, please comply."

I received no reply, and on June 28 of the same year, 1976, I called Ms. Phillips.

Q. Who is Ms. Phillips?

A. She is a Claim Representative of the Insurance Company of North America, and requested Employer's First Report of the Accident and whatever the status of the case may be, and she said they didn't have one—didn't have the Employer's First Report, but she would call back.

[207] On June 30, two days later, I called Mrs. Hunter of the Insurance Company of North America, who is Ms. Phillips' supervisor, and she stated that she contacted the Employer, and they have no knowledge of the Claimant's sustaining an injury, and they were sending in a negative Employer's First Report of Accident.

The next thing we received, sir, was a controversion form sent out by the Carrier.

JUDGE GERSHUNY: What was the date of that form?

THE WITNESS: They did not date it.

JUDGE GERSHUNY: When was it received?

THE WITNESS: Unfortunately, it wasn't stamped in, sir.

But I have a note dated July 16, '76, to send that form to Mr. Riley, the controversion, with a copy to Mr. Green, and that did go out on July 19, sir.

JUDGE GERSHUNY: Would that indicate to you the approximate time that you may have received the other?

THE WITNESS: Yes, sir. It would have been somewhere between June 30 and July 19, sir.

JUDGE GERSHUNY: Thank you.

By MR. GREEN:

Q. Mr. Mistretta, what is the next even [sic] in your file?

A. After sending out that notice to Mr. Riley, with a copy to you, on July 22, '76, you wrote to us—to the Bureau, [208] requesting a conference.

Q. An informal conference?

A. Yes, sir.

* * * * * * * * * *

**Esther Shafer**

JUDGE GERSHUNY: Would you state your full name, please?

THE WITNESS: Esther Shafer.

JUDGE GERSHUNY: How do you spell your last name?

THE WITNESS: S-H-A-F-E-R.

JUDGE GERSHUNY: And where do you reside, and by whom are you employed?

THE WITNESS: My home address is 8809 Woodland Drive, Silver Spring.

JUDGE GERSHUNY: By whom are you employed?

[209] THE WITNESS: Federal Sheet Metal.

DIRECT EXAMINATION

By MR. GALIHER:

Q. Ms. Shafer, can you tell us what your position and duties are with Federal Sheet Metal?

A. I am Secretary to the President, but I also handle payroll, accident reports, and any records that concern any of our employees.

Q. Now, how long have you been with Federal Sheet Metal?

A. Since July of 1975.

Q. And since that time, can you tell us where your office has been located?

A. I have been located at Walter Reed Hospital, we were building the new hospital. I was in a trailer there until last month.

• • • • • • • • • •

[224] Q. Now, can you tell us, with respect to Howard Sutherland's records, what it shows for the period of time after November 19, 1975?

JUDGE GERSHUNY: Would it be clearer to have the witness read off the days that he worked, from the 18th on?

MR. GALIHER: Fine, yes, Your Honor.

THE WITNESS: He worked on the 19th, not on the 20th, not on the 21st. The 22n [sic] and 23rd were Saturday and Sunday. He did not work the 24th. He did not work the 25th.

He worked the 26th, not the 28th. The 27th was evidently Thanksgiving. The 29th and 30th were Saturday and Sunday. He did not work the first, did not work the second, did not work the third, did not work the fourth, and did not work the fifth. The sixth and the seventh were Saturday and Sunday. Did not work the eighth, did not work the 9th——

JUDGE GERSHUNY: Is there any reason to go any further?

[225] MR. GALIHER: No, there is not.

JUDGE GERSHUNY: Is it clear then that after the 19th the only day he worked was the 26th?

THE WITNESS: That is right.

JUDGE GERSHUNY: Was it a full day that he worked?

THE WITNESS: Yes, it was eight hours.

* * * * * * * * * *

By MR. GREEN:

[227] Did you ever have occasion to have an injury on the Walter Reed job site, where no one reported the injury to you until after you discovered the man was in the hospital?

A. Yes.

Q. Is it fair to say, Ma'am, that this is a regular occurrence?

A. Rarely.

* * * * * * * * * *

[231] A. Entry 98 is Ralph Riley.

Q. What is the notation?

A. "Off rolls, 12-10-75, per Blackie."

Q. Did you make that entry on this record?

A. No.

Q. The date on the entry is 12-10-75?

A. That is when he was taken off the payroll.

Q. Right, "per Blackie." Who is Blackie?

A. He was a superintendent.

Q. Blackie Bransfield?
A. Right.

MR. GALIHER: I thought counsel said is that the date of the injury, and then this witness said, that is the date he went off the payroll. I don't want the record to reflect there is any affirmance by this witness that that is the date of the injury. She was answering a question——

JUDGE GERSHUNY: Let's make it absolutely clear that the written entry reads, "off rolls, 12010-75, [sic] per Blackie." [232] The word injury doesn't show up there at all.

THE WITNESS: This often happens, we carry a man on the payroll for sometime after he is injured.

MR. GREEN: All right.

THE WITNESS: Or for any other reason.

By MR. GREEN:

Q. Would you turn to the week ending December 9, 1975——

JUDGE GERSHUNY: What was the date?

MR. GREEN: December 9, 1975. On my copy of Respondent's H, it is the second page. Entry 74, would you——

THE WITNESS: Ralph Riley.

JUDGE GERSHUNY: I thought you said injury before. It should be entry.

By MR. GREEN:

Q. Could you read that?
A. Ralph Riley. On Wednesday, December 3, hospital; December 4, hospital; December 5, hospital. Then the 6th and 7th are Saturday and Sunday.

Now, the 8th and 9th, there are no hours, but there is no indication of hospital.

Q. What would the indication of hospital mean in that record?

A. I did not make this.

Q. But you are the only person here to explain it to the Court.

[233] A. What I think, we heard he was in the hospital, and we like to know the reason a man is out.

* * * * * * * * * * *

[234] Could you direct your attention, now, to the sheet ending December 2, 1975, entry 91?

A. Right, Howard Sutherland, then there is a notation, "we owe eight hours."

Then on the 26th, he worked eight hours. The 27th was a holiday. The 28th is vacation for him. The 29th and 30th, Saturday and Sunday. The first he worked eight hours. The 2nd [235] he worked eight hours. That brought the total of 32 hours.

Q. When you testified earlier, in response to Mr. Galiher's question, that Mr. Sutherland's last full day at work being the 26th, that testimony was perhaps incorrect upon a review of these records?

A. His last day he was paid was the 26th.

Q. You are indicating he was owed eight hours, he worked the first and second, and so was paid——

A. I am not in a position to really interpret that. I did not enter it.

JUDGE GERSHWIN: May I see that a moment? I am somewhat confused.

By MR. GREEN:

Q. Ms. Shafer, let me direct you to the week ending December 2, 1975. There is an indication, "we owe eight hours." Is it fair to say that that indication might be because there was an entry prior that did not reflect eight

hours of work and, upon a check of foreman's records, perhaps, he was owed eight hours?

A. I have no idea why that is there. I don't believe I am in a position to say that.

Q. Go through the rest of that with me. The next day we have a vacation day indicated. Vacation days are paid directly to the Union hall, aren't they, Ma'am, as part of the bargaining agreement?

[236] A. That I do not know. We do not actually pay the men on vacation.

Q. That goes in for hours in the hall?

A. That I don't know.

Q. There is no pay that goes to them for the indication marked vacation?

A. Not from Federal Sheet Metal.

Q. There is no wage earned for that?

A. Right.

Q. Then there are two more indications, December 1 and December 2 of 1975, with an indication, vacation. Those days were not work, is that correct?

A. That is right.

Q. However, at the end of the week there is an entry, 8-8, which indicates the eight hour periods at the end of that week that were owed?

A. Right.

JUDGE GERSHUNY: What does the 8-8 mean at the end of that entry?

THE WITNESS: That is what I am not in a position to say, because I did not enter it.

JUDGE GERSHUNY: Those kinds of entries show up all throughout those payroll records. There are numbers over other numbers. What does that entry mean?

Take one other entry, and just explain to us—I am [237] sorry. There are no other entries like that. I see.

Okay, I am sorry.

By Mr. Green:

Q. Would it surprise you if Mr. Sutherland testified that he worked perhaps four or five days after the 19th—maybe three or four—he isn't sure—and he was paid for those days, would that surprise you, even though your records indicate the 19th being the last day?

A. Yes, it would.

Q. Would it still surprise you he had worked three or four days after the 19th of November, when you take into consideration the entry on line 94 of the week ending December 2, 1975? Does that still surprise you?

The reason I ask that question, if the 8-8 stands for two additional days, and the entry at the front of 91 indicates that they, Federal Sheet Metal, owed this gentleman eight hours, if the entry prior to that indicates you paid him all the time, it would seem to me you gave away money, or your records are incomplete.

A. As I say, I did not make these entries. I do not know.

* * * * * * * * * *

[242]

**James A. Bettis**

Judge Gershuny: Would you spell your last name, please?

The Witness: B-E-T-T-I-S.

Judge Gershuny: Where do you reside?

The Witness: Springfield, Virginia.

Judge Gershuny: Mr. Green, you may proceed.

DIRECT EXAMINATION

By Mr. Green:

Q. Mr. Bettis, if you don't understand any of my questions because of my cold, or anything else, you let me know, and I will repeat it.

A. Sure.

Q. You have been up all night?

A. Yes.

Q. Was there a time when you were a business agent for the Sheet Metal Local?

A. Yes, sir.

Q. Are you still a business agent?

A. No, I am not.

Q. How long has it been since——

A. 1976.

Q. Mr. Bettis, are you here pursuant to a subpoena?

A. No, I am not.

Q. I would like to ask you a question. Do you have a recollection, sir, in November of 1975, or December of 1975, of receiving a telephone call from Mr. Ralph Riley, or a visit from Mr. Ralph Riley, concerning a work injury, in your capacity as a business agent?

A. I recall a telephone message. He didn't come in and talk to me personally.

Q. Would you tell us your recollection of those events? [244] A. He told me he was injured on the job, and he he needed the name of the insurance carrier——

Q. Let me stop you for a second. Did he call you, or did you call him?

A. He called me.

Q. Had you received an earlier call from a Blackie Bransfield?

A. I talked to him two or three mornings every week during the week. He called to ask about Riley. I said he had called me. At the same time, Blackie asked me when he was coming back to work. I said I didn't have any idea.

Q. Do you recall, Mr. Bettis, what that insurance carrier was, for Federal Sheet, at that time?

A. It was either INA, or CNA.

Q. Do you have any other recollection of getting back to Mr. Riley with information concerning the insurance company?

A. No.

Q. Do you have any recollection of Mr. Bransfield, or anyone at that trailer, calling you again concerning Mr. Ralph Riley?

A. No.

Q. That is your entire recollection of these events?

A. One time, I talked to Blackie Bransfield about Riley.

Q. What time—do you have any recollection—that you talked to him?

[245] A. I couldn't tell you the exact date. It had to be either the latter part of November, or first part of December.

Q. Why do you feel that way?

A. To me, it was right around Thanksgiving time. We did not record any telephone calls.

Q. Let me go into that for a second. As a business agent at that time, did you make a practice of reporting work injuries?

A. No.

Q. Was this an exceptional kind of thing, when you reported it to Blackie Bransfield?

A. No. He just asked me when he was coming back to work. I had no idea.

MR. GREEN: Nothing further.

## CROSS EXAMINATION

By Mr. Galiher:

Q. Mr. Bettis, what kind of work do you do now?
A. Sheet metal work.

Q. How old are you?
A. Fifty-seven.

Q. You are still a member of the Union local that Mr. Riley is a member of?
A. Yes, I am.

Q. I don't think the record is real clear here. Let me ask it to you like this, first thing that happened, you received a call from Riley. You did not receive a call from Bransfield.

[246] Right.

Q. When you received a call from Riley, he said he was injured on the job, and did he say how he was injured on the job?
A. No. He told me he was injured on the job, and wanted the name of the insurance carrier.

Q. Did he tell you he was in the hospital at that time?
A. No, he did not.

Q. Did he tell you what part of his body was injured on the job?
A. No, sir.

Q. And then your practice was that you talked to Blackie Bransfield about two or three times a week at that time. About what, sir?
A. He would call me for people to come to work.

Q. Now, was it then, during one of these phone calls from Mr. Bransfield, which occurred after Mr. Riley had called you, that you told Mr. Bransfield that you had received a call from Riley, and that Mr. Riley had been in-

jured, and needed the name of an insurance company, is that right?

A. That's right.

Q. And did you advise him at that time that Mr. Riley had said he had been injured on the job?

A. Yes, I told him that on the telephone at the time.

MR. GALIHER: Thank you. I don't have any other questions.

[247] JUDGE GERSHUNY: Mr. Bettis, you are excused. Thank you for coming in.

THE WITNESS: Thank you.

(Witness excused.)

MR. GREEN: Your Honor, the Claimant calls James Killeen.

Whereupon,

**James Killeen**

was called for examination and, having been first duly sworn, was examined and testified as follows:

JUDGE GERSHUNY: Would you spell your last name, please?

THE WITNESS: K-I-L-L-E-E-N.

JUDGE GERSHUNY: Where do you reside?

THE WITNESS: Prince George's County, Maryland.

JUDGE GERSHUNY: Mr. Green, you may proceed.

## DIRECT EXAMINATION

By MR. GREEN:

Q. Mr. Killeen, what is your present occupation?

A. Business agent for Sheet Metal Workers.

Q. How long have you held that position?
A. January 18, 1975.

Q. Mr. Killeen, are you here pursuant to a subpoena?
A. No.

Q. Do you have a recollection, sir, of an injury to [248] Ralph Riley, or any events surrounding Ralph Riley and his work in late November or December, '75?
A. I had heard that Ralph was hurt at that time, yes.

Q. Do you have a recollection, sir, of a telephone call from Mr. Riley to Mr. Bettis?
A. Specifically, no.

Q. All right, sir.

Do you have a recollection of any event surrounding Mr. Riley reporting an injury to you?
A. Correct. Whatever agent is in the hall, I would try to answer to. Ralph got me. Whether specifically it was Bettis or me, what have you, we just try to serve the membership.

Q. Do you have a recollection, Mr. Killeen, of when that might have been?
A. In December, roughly the middle of December.

Q. 1975?
A. Correct.

Q. Do you have a specific reason why you recall this conversation?
A. That morning I had been talking to a buddy of his——

Q. Whose?
A. Ralph's. Then I got a call from Ralph, and I had only met Ralph on two occasions. You try to get to know your membership. I had heard certain things about him. I told Ralph I would help him any way I could.

[249] Q. What was the request?
A. Would I call out to Federal Sheet Metal and inform them he had been hurt on the job.

Q. Was he asking for any specific information from Federal Sheet?

A. He asked me if I would find out the insurance carrier.

Q. All right, sir.

Do you have recollection of making such a call?

A. I do.

Q. On his behalf?

A. I do.

Q. Who would you have called?

A. Blackie Bransfield. I knew Blackie well, because I worked right there in the trailer.

Q. Had you been on that job site, sir, prior to this injury?

A. I had been, prior to my election.

Q. As a matter of fact, you know Blackie Bransfield rather well?

A. Know of him, and then worked for him, right under him, eight months.

Q. You placed a call to Mr. Bransfield. Do you remember what information you gave him?

A. That Ralph had called me to tell them that he was hurt on the job. That was the message, to give him the insurance [250] carrier.

I have it on the back of the sheet as Insurance Company of North America. It is on the back of our out-of-town list jobsheet.

Q. Do you have a recollection of talking to Mr. Riley to give him the name of the insurance company?

A. Yes, I would call him back.

Q. Do you have a recollection of doing that?

A. Yes.

• • • • • • • • • • •

Whereupon,

**John Fury**

was called as a witness and, having been first duly sworn, was examined and testified as follows:

JUDGE GERSHUNY: Would you state your name, and your home address, Mr. Fury?

THE WITNESS: John R. Fury, 529 Nolwood Court.

## DIRECT EXAMINATION

By MR. GALIHER:

Q. How long did you work for Federal Sheet Metal at [252] Walter Reed Hospital?

A. Approximately four years.

Q. You are a sheet metal worker?

A. Foreman.

Q. You were foreman on this particular job?

A. Yes.

Q. Did you ever have occasion, in November of '75, to have Mr. Howard Sutherland or Ralph Riley on your crew?

A. Yes.

Q. Can you tell us how long they were on your crew, and what floor your crew was working on at that time?

A. Well, telling you how long is kind of hard. I guess a couple of months. We were on the second floor, first and second floor.

Q. Did there ever come a time when Mr. Riley and Mr. Sutherland were transferred to work either on the fifth or sixth floor for other foremen, or that you went up there with them?

A. They were transferred to the fifth or sixth floor.

Q. Can you tell me who they were transferred to?

A. I think it was Jack Barron.

Q. Can you tell me, when you talk about transfer, how it works on the job, as far as these men were formally a member of your crew, and then transferred to Mr. Barron, what kind of an operation does that take to accomplish this?

A. The superintendent tells me he wants the men to go [253] upstairs.

Q. Were you assigned different floor areas in that building?

A. Yes, I was.

Q. You were on the second floor?

A. No, I was all over the job.

Q. Was the foreman Mr. Phares?

A. Yes.

Q. Did there come a time, you can recall, where Mr. Sutherland and Mr. Riley were transferred?

A. Yeah, they were.

Q. Can you tell me thereafter how it worked, as far as, once they were transferred, if somebody was injured, what instructions did the company give to people about reporting injuries? How was that to be handled?

A. Well, if a man in your crew was injured, you were supposed to have an accident report filled out.

Q. That man was supposed to report the injury to his foreman, whoever his foreman was at the time?

A. Well, you know, yeah.

Q. Now, did there come a time when you became aware that Mr. Riley was in the hospital?

A. Yeah, he was sent upstairs, and I don't know how long, maybe three or four days later, Howard Sutherland came back to the job. I believe he came back to pick up his tools, or pick [254] Ralph Riley's tools. A bunch of the guys used to meet down on the second floor. He told all the men there that Ralph was hurt—got hurt, and that he also had a heart attack, and was in intensive care.

MR. GALIHER: Thank you, Mr. Fury. I don't have any other questions.

JUDGE GERSHUNY: Mr. Green?

CROSS EXAMINATION

By MR. GREEN:

Q. Mr. Fury, did Mr. Sutherland say that Mr. Riley was hurt on the job, or just hurt, do you recall?

A. I am more than sure he said he was hurt on the job, yes, sir.

Q. You had been his foreman earlier, is that right?

A. Yes, sir.

Q. Now, Mr. Sutherland told you he was hurt on the job?

A. Yes.

Q. Why didn't you make an injury report at that time?

A. He wasn't working for me. It wasn't my job.

* * * * * * * * * * *

[255] Q. When Mr. Fury said he was hurt on the job, did —pardon me.

Well, when Mr. Sutherland said that to you, did he indicate what part of his body was hurt, or what he was doing when he got hurt?

A. No.

* * * * * * * * * * *

[256] JUDGE GERSHUNY: Is there any issue in this case as to the inadequacy of the notice, because I didn't understand that it was at issue?

Foreman Fury has just stated that he was told by Mr. Sutherland that the Claimant was injured on the job.

Now, are you going to, now, contend that that is an insufficient notice?

MR. GALIHER: As far as the notice issue, no. As far as existence and happening of an accident, yes.

JUDGE GERSHUNY: Why don't you explain that a little more to me for the record at this point? I don't understand that fine line you are trying to draw.

MR. GALIHER: There are two things you have to have. You have to have an accident, and you have to have an injury, and then you have to have notice. For the first time, with Mr. Fury's testimony, we now know there was some claim that Mr. Riley was hurt on the job. We don't know the specifics of it.

We are going to have to wait for the doctors on that. We still have a question as to whether the injury happened in the way described by Mr. Riley as far as the accident, because of the hospital records, and because of the doctors' records, which are in evidence in the case.

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[258]

**Howard Sutherland (continued)**

MR. GREEN: That document, for identification, is a [259] pay stub issued to H. Sutherland, Social Security Number 230-34-7513, from the New York office of Federal Sheet Metal, 7th Street, Jamaica, New York, Division of United States Industries, indicated as having been issued for the period ending 12-2-75.

JUDGE GERSHUNY: What does it show?

MR. GREEN: It shows that Mr. Sutherland received, for the work ending 12-2-75, pay in the gross amount of $159.36 from Federal Sheet Metal at the hourly rate of $9.96. It also shows his gross earnings for that year with Federal Sheet Metal, $1,533.84.

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**CLAIMANT'S EXHIBIT 2**

Office of the Deputy Commissioner
U.S. Department of Labor
Office of Workers' Compensation Programs
1717 K Street, N.W.
Washington, D.C. 20211

Claimant: Ralph E. Riley
Employer: Federal Sheet Metal Inc.
Accident Date: 11-19-75

Gentlemen:

This is to notify you that I am hereby making claim for workmen's compensation benefits and am filing this claim with you in accordance with Sections 13 and 19 of the Longshoremen's and Harbor Workers' Compensation Act, as extended, by the District of Columbia Workmen's Compensation Act.

I was injured while I was working at Walter Reed Hospital.

The accident occurred when I was lifting duct work weighing approximately 500 pounds and felt sharp pain in neck.

I sustained the following injuries: cervical neck.

Please be advised that I have retained Ashcraft, Gerel & Koontz to represent me in this claim, and it is understood that any attorney's fee will be approved by the Office of Workers' Compensation Programs.

Very truly yours,

/s/ Ralph E. Riley
Claimant
Attorney handling case:
xxx James F. Green

Ashcraft, Gerel & Koonz
Attorneys at Law
925 - 15th Street, N.W.
Washington, D.C. 20005
Telephone: 783-6400

**CLAIMANT'S EXHIBIT 3**

December 29, 1975

Mr. George F. Mistretta
Office of Workmen's
Compensation Programs
1717 K Street, N.W.
Washington, D. C.

Re: *Ralph E. Riley* v.
*Federal Sheet Metal Inc.*
D/A 11-19-75

Dear Mr. Mistretta:

Please find enclosed herewith an original and two copies of our claim form to be filed on behalf of our client, Ralph E. Riley.

Very truly yours,

James F. Green

JFG/alw

Enclosure

cc: INA Insurance Company
5225 Wisconsin Avenue
Washington, D. C.

**RESPONDENTS' EXHIBIT A**

GUILLERMO E. SANCHEZ, M.D.

26 January 1976

Insurance Company of North America
5225 Wisconsin Avenue, N.W.
Washington, D.C. 20015

Attention: M's Ann E. Hunter

Re: *Ralph Riley*

Dear Madam:

The following is a preliminary report of orthopedic examination and treatment on Ralph Riley who was initially seen in Orthopedic Consultation at the Physicians Memorial Hospital in La Plata, Maryland, on the 23rd of November, 1975, at the request of his attending physician, Dr. Henry Burke, who had admitted this patent to the Intensive Care Unit for treatment of a heart condition.

ORTHOPEDIC HISTORY:

Ralph Riley is a 51 year old male who states that since the year 1970 that he has been consistantly [sic] troubled with pain at the base of the neck, both shoulders and both arms. At that time the problem was disagnosed as cervical osteoarthritis, by his attending physicians and he had different trials of conservative therapy. The therapy consisted of ultrasound, hydrotherapy and cervical traction, which at times had resulted in severe headaches forcing him to discontinue the therapy. He states he also had muscle relaxents [sic] off and on, with only partial relief from his symptoms.

In the year 1969, he states he had an injury when he fell back against a masonry wall, but at that time he remembers injuring mainly the left shoulder. There was also another injury while in the active military service, with the Marines, when he fell from a horse and was dragged for approximately ¼ miles.

This patients complaints since 1970 have been characterized by exacerbations and remissions, that have been treated with different medications including Indocin. Most of his work is overhead and with the neck on hyperextension.

In November, 1975, this patient was doing stock work at the Walter Reed Army Medical Center, hauling the duct work into position, when he felt pain at the base of the neck.

He states at this time, he felt pain at the base of the neck. He was already taking medications. He states he took some of his medications and this gave him relief temporarily. However, the following day he developed acute chest pain and was admitted to the Intensive Care Unit in the Physicians Memorial Hospital in La Plata, Maryland. He states with all of the xcitement [sic] at the time of admission, he forgot to mention to the attending physicians, this incident that happened at work.

During this consultation, the main problems were of constant pain at the base of the neck, radiating down both arms to the tip of the fingers, which is markedly increased by coughing and sneezing. Tingling and numbness sensations, particularly on the ulnar side of the left hand has become more progressive.

PHYSICAL EXAM:

Initial examination revealed an individual that held his neck slightly tilted forward. The range of motion revealed that flexion could be accomplished at two finger breaths from the sterno-notch to the chin. Extension was bearly [sic] to neutral. Rotation was 50 degrees on each side. Lateral bending was slightly limited. There was tenderness to deep digital pressure from C4 to C7.

Abduction of the left shoulder was limited. The reflexes appeared equal. The power of grip was markedly decreased.

Sensation did not show findings suggestive of a dermatone [sic] involvement.

RADIOLOGY:

Xrays of the cervical spine revealed osteoarthritic changes with narrowing of the disc space, particularly at C6 and C7 levels.

DIAGNOSIS:

Osteoarthritis of the cervical spine, with radiculopathy of C6, C7

HOSPITAL COURSE, TREATMENT AND PROGRESS:

While in the hospital, cervical traction was applied, which the patient was unable to tolerate, stating this aggravated the pain and in addition precipitated the onset of headaches. This was discontinued. He was still receiving analgesics and muscle relaxents [sic] which again were of very little value. A cervical collar did not appear to relieve the symptoms. The patient was discharged by Dr. Burke, with instructions for followup care.

On the 19th of December, 1975, Mr. Riley was re-examined in this office. At this time, he reported absolutely no improvement from his symptoms. He stated that the pain was even more severe and still radiating to both upper extremities, but more towards the left side. At this time it was decided to have him follow a supervised regime of physical therapy and he has been receiving treatment in this office in the form of hot packs, ultrasound and cervical traction, which has helped in relief from his symptoms to some extent.

The patient was last seen in this office on the 23rd of January, 1976.

At this time, the range of motion of the neck had improved. There is still significant pain present, but to a lesser extent.

Mr. Riley is to return to this office in three weeks, for re-evaluation.

Sincerely yours,

Guillermo E. Sanchez, M.D.

GES:mb
Encl.

cc: Henry Burke, M.D.
La Plata, Maryland 20646

**RESPONDENTS' EXHIBIT B**

87

SA 248

INA

**INSURANCE COMPANY OF NORTH AMERICA**

**WORKMAN'S CLAIM FOR COMPENSATION**

PLEASE COMPLETE

REQUIREMENTS: Claimant must cooperate in furnishing full information. This claim form should be fully completed and promptly filed by injured person.

WRITE CAREFULLY, USE PEN OR INDELIBLE PENCIL. MAIL DIRECT TO

**CLAIM**

I hereby make claim upon my employer Federal Sheet Metal and the INSURANCE COMPANY OF NORTH AMERICA for compensation provided by law, and base my claims on the following facts, which I certify are true:

**THE INJURED PERSON**

How long have you worked for the above employer? 137 hours

Occupation when injured Sheet Metal WKR Were you doing your regular work? YES

Give date of your birth 1-1-24 If under 21, give name and address of Parent or Guardian

**THE INJURY AND THE CAUSE**

Place where injury was sustained, street and No. Walter Reed Hospital

City or town Washington, D. C. If away from employer's premises or plant, state where

Date on which injury was sustained 11-19-75 Hour of day 3:45 P.M.

Date forced to leave work on account of injury hospitalized Hour of day 11-20-76 A.M. 6.

Salary (or wages) when injured, $ 9.96 per hour Date salary (or wages) was stopped as a result of your injury 11-19-75

On whose payroll were you? Federal Sheet Metal

Describe fully nature and extent of injury and how same was sustained Lifting sheet metal duct work with shoulders into trapeze hangers striking neck and shoulders on duct work aggravating existing cervical arthritis

When did you first report your injury? 11-24-76 To whom? Floor foreman

Was injury caused by another person? NO Name

Address If so, give particulars on reverse side.

Have you claimed or received settlement for this injury? NO from whom

Name and address of two eye witnesses: WORKING PARTNER

Name Howard Sutherland Address 5901 Fista Road, Oxon Hill, Md

Name Address

**MEDICAL ATTENDANCE**

~~(La Plata, Md 20646 (Box 591) Henry L. Burke, M.D.)~~

Name of attending physician or surgeon Guillermo Sanchez, M.D. Physicians Memorial Hosp.

Doctor's address Box 387 City or town La Plata, Md. 2064

To what hospital sent? Physicians Memorial, La Plata, Md.

If not sent to hospital, where?

**RESULT**

Have you returned to work? No If so, give date of return

If not, can you state when you will be able to return Retired March 1, 1976

Are you still under the doctor's care YES Present Wages, $ Per

Signed this 16th day of July 1976

Workman making claim sign full name here Ralph E. Riley

Are you related to the employer NO If so, what?

Give address to which mail should be sent Rt. 1 Box 46A, Indian Head, Md. 20640

Witness to signature sign here Margaret M. Riley

Are you living in the employer's household or premises

Address of witness

NOTE: If you were injured in a street accident make diagram on reverse side and explain fully who was at fault and why.

Resp. # B
Riley

CL-153a Printed in U.S.A.

**RESPONDENTS' EXHIBIT C** LA PLATA MARYLAND

| | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 1-3 7-7 | PATIENT'S LAST NAME: Riley | FIRST NAME: Ralph | E. | MAIDEN NAME | | HOSP. RECORD NO.: 10033 | | | | | | | |
| PATIENT'S ADDRESS: Route 1, Box 46A | CITY: Indian Head | STATE: Md. | ZIP: 20640 | COUNTY: Charles | HOME PHONE NO.: 301-743-5077 | LAST ADMISSION DATE | ☐ INPAT. ☐ OUTPAT. | | | | | | |
| 14-18 ADMISSION TIME: 08:30 A M | | 19-24 ADMISSION DATE: 11-20-75 | 25-26 ROOM: 2101 | BED 29-30: 99 | 31 PATIENT'S TYPE: 1 | DATE AND TIME OF DISCHARGE: 11/25/75 11 AM | | | | | | | |
| 36-42 DATE OF BIRTH: 01-01-24 | AGE: 51 | PLACE OF BIRTH: Pa | 32-34 RELIGION: Cath. | 35 RACE: 02 | SEX: | MARITAL STATUS: Married | CODE: 01 | 43 PIC: A | 44 # PLANS: 1 | | | | |
| 45-49 ADMITTING DOCTOR: Burks | DOCTOR NO.: 01004 | SERVICE: MSC | | REFERRED BY | | STATE | MILITARY SERVICE | YRS. & BRANCH | | | | | |
| SPOUSE'S NAME AND ADDRESS: Margaret M. Riley | | | | | | | | TELEPHONE NO. | | | | | |
| NEXT OF KIN: Same | ADDRESS | | | | | RELATIONSHIP | TELEPHONE NO. | | | | | | |
| PERSON TO NOTIFY IN CASE OF EMERGENCY: Same | ADDRESS | | | | | RELATIONSHIP | TELEPHONE NO. | | | | | | |

ADMITTING DIAGNOSIS: (ICDA CODE)
R/O Myocardial infarction

| NO. HOSP. DAYS | DATE BABY BORN | SEX | DATE BABY DISCHARGED | |
|---|---|---|---|---|
| 5 | | | | V D |

FINAL DIAGNOSIS

Cervical osteoarthritis
Sliding hiatal hernia
Anxiety

CODE NUMBER

715.1

S S ?

COMPLICATIONS

OPERATION

Resp. # C
Riley

RESULT: RECOVERED ☐ IMPROVED ☐ UNIMPROVED ☐ NOT TREATED ☐ DIED ☐ RELEASED AGAINST ADVICE ☐

2 8 75
DATE

6

Richard Burks M.D.
SIGNATURE ATTENDING PHYSICIAN

354007

11 PATIENT'S NAME (LAST, FIRST, MIDDLE): Kiley, Kachis E
ADMISSION DATE: 11-20-75
PATIENT TYPE (1-3):
SOCIAL SECURITY NO: 145-22-2[illegible]
RELIGION: Cath
RACE: 8
PATIENT'S ADDRESS (STREET, CITY, STATE, ZIP): Rt 1 Box 46A Indian Head
PRV CLASS (1-3):
ADMITTING DOCTOR NO: 001-19
SERVICE: M/S
TIME: 6:20 AM PM
PHONE: 743-5077
DATE OF BIRTH: 1-1-24
AGE: 51
SEX: M F
MARITAL STATUS: S M W DIV SEP
PATIENT'S EMPLOYER: Sheet Metal Local 102
13 PERSON RESPONSIBLE FOR BILL: Ralph E Kiley
ADDRESS: Same
TELEPHONE NO:
RELATIONSHIP: self
EMPLOYER OF RESPONSIBLE PERSON: Sheet Metal Local 102
EMPLOYER'S ADDRESS: Work D.C.
TELEPHONE NO:
NAME AND ADDRESS OF INSURANCE CO: Local 102
NAME OF INSURED OR SUBSCRIBER:
IDENTIFICATION NO:
GROUP NO:
CODE:
EMPLOYER OF SUBSCRIBER:
RELATIONSHIP: SELF SPOUSE FATHER MOTHER OTHER
DATE OF INJURY OR ONSET OF ILLNESS: 11-20-75 @ 3AM
BROUGHT IN BY: Wife
REMARKS:
MEDICARE NO:
PART A COVERAGE:
PART B COVERAGE:
MEDICAID NO / STATE AGY:
DATE OF ISSUE:
EXPIRATION DATE:
CITY / COUNTY / STATE:
PRIVATE REFERRAL PHYSICIAN: Dr. H Blustein / Burke DC
NOTIFIED? YES NO
15
POLICY / CONTRACT OR SUBSC NO:
GROUP NO:
ESTIMATE KEY:

CHARGES

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| EMERGENCY ROOM | | MEDICAL SURGICAL SUPPLIES - CAST | | OPERATING ROOM MINOR SURGERY | | ANESTHESIA SUPPLIES | |
| X-RAY | | PHARMACY | | RECOVERY ROOM | | EKG | 25.00 |
| LABORATORY | | OXYGEN | | ANESTHESIA FEE | | TOTAL CHARGES | |
| IV | | | | | | AMOUNT PAID | |
| | | | | | | BALANCE DUE | |

NATURE OF COMPLAINT: Both arms tight - chest - orbit pain (6:25) BP 132/90 P 88 T
WHEN, WHERE, HOW: (6:25) Woke up at 3AM with feeling of tightness in arms chest and blurry vision. Unable to walk. Had similar episode 2 years ago. Keeps stating that cholesterol level needs checking. Meds → Indocin for arthritis
PHYSICAL FINDINGS: No SOB, nausea
P.E. Pt alert, oriented x 3
HEENT - normal
Neck - supple, nontender - Carotids full
Chest - Clear - Back - no CVA tenderness
Heart - RR+S1 S2, no gallop
Abd - soft, nontender, no organomegaly
Ext - normal - Pare PVE
TREATMENT: 6:30 CBC - 90, SGOT, SGDH
Demerol 100 - Refused
DIAGNOSIS: R/O MI

☐ POLICE ☐ CORONER
☐ REFERRED TO DR. Burke DC
Helen Kelsey RN
NURSE'S SIGNATURE R.N.

A.M. P.M. BY:
☐ HOME ☐ HOSPITAL ☐ OTHER
DATE P.M.
Jim Finnerty
PHYSICIAN'S SIGNATURE M.D.

FOLLOW-UP INSTRUCTIONS TO PATIENT:

I hereby acknowledge treatment and/or consultation as specified above. I do hereby give my consent for treatment as ordered by the attending physician in this hospital. I also understand follow-up instructions given to me.

NAME (SIGNATURE) ADDRESS 40033 TEL. NO.

WITNESS

MH 000-300-316

Best Copy Available

## HISTORY

HOSPITAL REGULATION:

All Positive and Important Negative Findings Shall Be Recorded.

Date 11/20/75 Hour 7:30 a.m.

ORDER OF RECORDING:

1. Chief Complaint 2. History of Present Illness 3. History of Past Illness a) childhood b) adult c) operations d) injuries 4. Family History 5. Social History 6. Systemic Review a) General b) Skin c) Head-Eyes-Ears-Nose-Throat d) Neck e) Respiratory f) Cardiovascular g) Gastrointestinal h) Genitourinary i) Gynecological j) Locomotor k) Neuropsychiatric 7. Signature

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This is a 51 year old male, who woke about 3 a.m. with a feeling of tightness across the chest like a rope. The pain and tightness in the [sic] both arms and blurred vision. He felt a little sweaty but no nausea and vomiting. He got up and his walking felt a little unsteady. He had sweating of his feet and hands and he felt like his equilibrium was off. He has had a similar episode about one year ago which time he was told of high blood pressure and high cholesterol. Since that time he lost 11 pounds. He has been on no medications for his blood pressure, he works on high places a [sic] a steel worker and intermittently has sharp shooting chest pains and pains in the back of his neck and shoulders which has been attributed to arthritis for which he has taken phsical [sic] therapy. The patient has two brothers, one of whom died of a heart attack at 59 and the other 63 who has problems with recurrent heart attacks. The patient is very anxious and tense. He has no pain at the present time. There is no history of diabetes. There is no history of syncope, no history of Rheumatic Fever, Scarlet Fever or heart murmur. There is no history of pedal edema, PND, orthopnea.

Past history, family history: Father died at 72, had diabetes. Mother 66 had heart disease. Four sisters, two have high blood pressure. One brother has diffuse arthritis. Childhood illnesses: Mumps. Operations: Surgery on the left leg from a war wound. Injuries: Fracture right shoulder. Fractured right arm. Allergies: Penicillin. Medication: Indocin for arthritis. Appetite good. Weight 175 to 180. No cigarettes, no alcohol, no coffee. The patient lives with his wife.

Head—The patient has intermittent headaches in the occipital area, occasional blurred vision and intermittent fuzziness of vision. He has had no syncope. Eyes—He has some dyplopia on occasion which quickly straightens out to a single image, no pain, redness. Ears—No decreased hearing, pain, discharge or bleeding. Nose—No epistaxis. Throat—No hoarseness, no difficulty in swallowing, no loss of voice. Respiratory—No history of contact with TB, he had pleurisy times one and pneumonia, No cough, no sputum production, no wheezing, no shortness of breath. GI—He has intermittent heartburn and indigestion. He avoids fatty foods, he takes Digel tablets. He has no melena, hematemesis, or hematochezia. He had no recent nausea and vomiting. He has had no upper GI or gallbladder study. GU—No dysuria, urgency, frequency, or hematuria. He fell and broke two of the lower right ribs about a year or two ago. No internal injuries. Musculoskeletal—He has arthritic complaints on the neck. Endocrine—There is no history or symptoms of diabetes, no history of symptoms of thyroid disease such as palpitations, edema or weather intolerance. There is no history of anemia or bleeding tendancy [sic]. He has had dental and no allergies to Novocain.

/s/ Henry L. Burke, M.D.

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Name—Riley, Ralph E. Hospital No. 40033
Location in Hospital—ICU HLB/sm
Clinic or Service—t: 11/21/75
Attending Physician—Henry L. Burke, M.D.

## PHYSICAL EXAMINATION

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HOSPITAL REGULATION:

All Positive and Important Negative Findings Shall Be Recorded

Date 11/20/75 Hour 7:30 a.m.

ORDER OF RECORDING:

1. General 2. Skin 3. Eyes 4. Ears 5. Nose 6. Mouth 7. Throat 8. Neck 9. Chest 10. Heart 11. Abdomen 12. Genitalia 13. Lymphatic 14. Blood Vessels 15. Locomotor 16. Extremities 17. Neurological 18. Rectal 19. Vaginal 20. Diagnosis 21. Signature

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On physical examination he is alert and oriented. The patient is appearing extremely anxious. Blood pressure in the right arm is 140/92, left arm 136/92. Pulse 72 and regular. Respirations 14. Head—Normocephalic, scalp clear. Neck—Decreased range of rotation to the right and left with tenderness in the cervical spine. JVP not elevated at 30 degrees. Thyroid not palpable, no masses, no bruits. Eyes—Pupils equal and reactive to light and accommodation. Extra ocular movements normal, conjunctiva not pale, sclera white, fundi Grade I, Ears—Tympanic membranes clear. Nose—Mucous membranes red and wet. Throat—Tongue well papilated, gag reflex positive, uvula midline, pharynx clear. Lungs—Clear to percussion and auscultation, heart PMI not felt, S1 normal, A2 greater than P2, no murmur, no gallop and no rub. Abdomen—soft, bowel sounds active, liver spleen and kidneys not felt, no masses and no bruits. Pulses—Carotid, brachial, radial, femoral, popliteal, posterior tibial and dorsalis pedis 2+, no edema. Neurologic—Alert and oriented, cranial nerves 2-12 intact. DTR 2+ throughout, Babinski negative. Sensory intact.

Motor intact. Testes descended bilaterally. Small left inguinal hernia, circumcised.

ADMISSION DIAGNOSIS: Chest pain, rule out myocardial infarction. Hypertension by history, anxiety. Cervical arthritis by history.

/s/ HENRY L. BURKE, M.D.

HLB:sm
t: 11/21/75

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Name—Riley, Ralph E. Hospital No. 40033

Location in Hospital—ICU

## FINAL SUMMARY SHEET

NAME: RILEY, Ralph E.

HOSPITAL NO. 40033

ADMISSION DATE: 11/20/75

DISCHARGE DATE: 11/25/75

ATTENDING PHYSICIAN: Dr. Burke

This is a 51 year old male, who awakened at 3 a.m. with a feeling of tightness across his chest like a rope. The pain and tightness radiated to both arms and he felt some blurred vision. He had some sweatiness, no nausea or vomiting. He got up and felt a bit unsteady. He had a coldness and sweating of his hands and feet and felt like his "equilibrium was off". He had a similar episode about a year ago and was told of high blood pressure and high cholesterol. Since that time he has lost 11 pounds, he has been on no medication for his blood pressure. He complains of intermittent sharp shooting pains in the chest and back especially the neck and shoulders, which has been attributed to cervical arthritis. He has seen an orthopedic surgeon for this, and has taken physical therapy. He has two brothers, one of whom died of a heart attack at age 59 and another brother age 63, who is currently in the hospital with a heart attack. The patient is extremely anxious and tense. Past history: Father died at the age of 72, he had diabetes. Mother age 66 had heart disease. Medication is Indocin for arthritis. Rest of the past history and review of systems can be seen on the admission history and physical.

On physical examination: His blood pressure 140/92 in the right arm, 136/92 in the left arm. Pulse 72. Neck—JVP was not elevated at 30 degrees. Lungs clear. Heart—PMI not felt, S1 normal, A2 greater than P2, no murmur, no gallop and no rub. Abdomen—Soft, bowel sounds active.

Liver, spleen and kidneys not felt, no masses and no bruits. Neurologic intact.

Hospital course: The patient was admitted to the Coronary Care Unit to rule out the possibility of a myocardial infarction. He had some pain in the left upper anterior thorax at the second and third rib insertions, there was some tenderness at that time. As he was at bedrest for two days, he began having sharp pains in the shoulders which did radiate to the upper arms. By 11/24/75, the ache and pain did seem to originate from the cervical spine, across the shoulders and down both arms. At the time of discharge. it was felt that his pain had been due to cervical arthritis and he was referred back to his private physician, Dr. Witosky. [sic] There was no evidence of any myocardial damage. He was discharged on Valium 5 mg t.i.d. and Buffered Aspirin as needed for his arthritis. Constant monitoring in the Coronary Care Unit revealed no arrhythmia. Consultation was obtained from the orthopedic surgeon, Dr. Sanchez, for evaluation of his neck pain. His impression was osteoarthritis of the cervical spine, possible radiculopathy of C6, C7. He recommended intermittent cervical traction, Valium and Bufferin, hot packs and if no relief, possible cervical nerve blockage. The patient could not tolerate the cervical traction and he perferred [sic] to return to Dr. Pavot, an orthopedic surgeon who he had seen previously.

Laboratory work: His admission Hematocrit 44, Hemoglobin 15.1, white count 4,200, 56 Segs, 1 Eos, 1 Baso, 37 LYmphs and 5 Monos. RPR non reactive. Urinalysis—Straw, 1016, pH 7, few Epitheal cells. SMA-12 revealed the following tests to be normal: Total Protein, Albumin, Calcium, [sic] Phosphorus, Cholesteral was 245, Fasting Blood Sugar was 105, BUN, Uric Acid, Creatinine, Bilirubin and Alkaline Phosphatase were all normal. Admission electrolytes—Sodium 144, Potassium 4.3, Chloride 111, CO 2 23. SErial enzymes on 11/20/75, LDH 56, SGOT 14, CPK 40.

11/21/75, LDH 43, SGOT 14, CPK 15. On 11/22/75, LDH 33, SGOT 14, CPK 6. On 11/23/75, LDH 44, SGOT 11, CPK 9. Serial EKG's beginning on 11/20/75 were all within normal limits, with no evidence of any serial change. X-rays, chest x-ray revealed no active disease. The heart was not enlarged. Examination of the cervical spine revealed narrowing of the intervertebral disc spaces at C5, C6 and C6-C7. Small degenerative spurs of the vertebral bodies was C5, C6 and C7 were noted. There is some encroachment on the neural foramina of C5-C6 bilaterally by the posterior spurs. Examination of the upper gastrointestinal tract revealed a small sliding hiatal hernia, no definite gastroesophageal reflux. Stomach was unremarkable. The duodenal loop and cap was normal.

Dicharge Diagnosis: 1. Cervical osteoarthritis. 2. Sliding hiatal hernia. 3. Anxiety.

The patient is returning to his private physician, Dr. Witosky [sic], for followup.

/s/ Henry L. Burke
Henry L. Burke, M.D.

HLB/sm
t: 12/8/75
cc: Dr. Witosky [sic]

RESPONDENTS' EXHIBIT D

SA 295 101

PATIENT'S ADDRESS: Rt.1 Box 46-A | CITY: Indian Head, MD 20640 | STATE | ZIP | COUNTY: Charles | HOME PHONE NO.: 301-743-5077 | LAST ADMISSION DATE | INPAT. OUTPAT.

ADMISSION TIME: 08:40 P M | ADMISSION DATE: 03-31-77 | DATE AND TIME OF DISCHARGE: 4/9/77 11:00 AM PM

DATE OF BIRTH: 01-01-24 | AGE: 53 | PLACE OF BIRTH | RELIGION: Pro | RACE: 02 | SEX: M | MARITAL STATUS: Married | CODE: 01 | P/C: A | PLANS: 1

ADMITTING DOCTOR: Szacher | DOCTOR NO.: 01122 | SERVICE: M/S | REFERRED BY | STATE | MILITARY SERVICE YRS & BRANCH

SPOUSE'S NAME AND ADDRESS: Margaret Riley same | TELEPHONE NO.

NEXT OF KIN: same ADDRESS | RELATIONSHIP | TELEPHONE NO.

PERSON TO NOTIFY IN CASE OF EMERGENCY: same ADDRESS | RELATIONSHIP | TELEPHONE NO.

ADMITTING DIAGNOSIS: (ICDA CODE) Acute lumbar strain

NO. OF DAYS: -OSP. | DATE BABY BORN | SEX | DATE BABY DISCHARGED

FINAL DIAGNOSIS | CODE NUMBER

Acute Lumbosacral Strain 8'

Cervical Spondylosis 5013

Hiatal Hernia

COMPLICATIONS

SAME

OPERATION

TRACTION 81.6

Resp. # D Riley

RESULT: RECOVERED ☐ IMPROVED ☑ UNIMPROVED ☐ NOT TREATED ☐ DIED ☐ RELEASED AGAINST ADVICE ☐

4-9-77 DATE

SIGNATURE ATTENDING PHYSICIAN M.D.

Best Copy Available

PHYSICIAN'S MEMORIAL HOSPITAL
La Plata, Maryland

RADIOLOGY—Whei-rung Fu, M.D.

M105
11/24/75

RILEY, RALPH E. Ind. Head, Md. 51WM Dr. Burke
UGI/C—spine/chest 2N4

Examination of the chest fails to demonstrate any active disease. The heart is not enlarged. The examination is otherwise unremarkable.

Examination of the cervical spine fails to demonstrate any evidence of fracture or dislocation. There is some narrowing of the intervertebral disc spaces of C-5 C-6 and C-6 C-7. Small degenerative spurs of the vertebral bodies of C-5 C-6 and C-7 are noted. There is some encroachment of neural vertebral foramen of C-5 C-6 bilaterally by the posterior spurs. The examination is otherwise unremarkable.

Preliminary film of the abdomen fails to demonstrate any significant abnormality.

Examination of the upper gastrointestinal tract demonstrates a small sliding type hiatal hernia. No definite gastroesophageal reflux is identified. The stomach is otherwise unremarkable. The duodenal loop and cap are also within normal limits.

IMPRESSION: Small sliding type hiatal hernia without demonstrable gastroesophageal reflux.

W. Fu, M.D.
11/24/75 nmr

# HISTORY

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HOSPITAL REGULATION:

**All Positive and Important Negative Findings Shall Be Recorded**

**Date 3-31-77**

ORDER OF RECORDING:

1. Chief Complaint 2. History of Present Illness 3. History of Past Illness a) childhood b) adult c) operations d) injuries 4. Family History 5. Social History 6. Systemic Review a) General b) Skin c) Head-Eyes-Ears-Nose-Throat d) Neck e) Respiratory f) Cardiovascular g) Gastrointestinal h) Genitourinary i) Gynecological j) Locomotor k) Neuropsychiatric 7. Signature

---

CHIEF COMPLAINT: Neck and back pain

HISTORY: Mr. Riley is a 53 year old male that for the last few days has been complaining of low back pain that started without significant history of injury. Yesterday he cut his lawn and had some soreness on his back that was more severe than usual. Today he was just working around the garden and he stated that his back locked on him with fierce pain that made him unable to move. He could not even sit and had to lie against a counter until the Rescue Squad came and picked him up and brought him to the ER.

In addition he has been also complaining of neck pain of diffuse location which is more severe on turning movements. The patient has had problems with his neck since 1970 and was admitted to his [sic] hospital once because of symptoms suggestive of radiculopathy. Following discharge he has been followed in my office on an outpatient basis. His symptoms have been controlled fairly well with medications, physical therapy and postural exercises.

PAST HISTORY: His father died at age 72 of diabetes. The mother is 66 and has heart disease. He has four sisters, two have high blood pressure.

He has had surgery on the left leg from a war wound. He had a fracture of the right shoulder and fracture of the right arm. The patient is allergic to *Penicillin*.

REVIEW OF SYSTEMS: The patient complains of occasional headache but [sic] visual disturbances. The patient has had a history of chest pain in the past and he was diagnosed as having sliding hiatal hernia. He has not had acute symptoms in the last year.

/s/ G. SANCHEZ
G. Sanchez, M.D.

GS/dlh
3-31-77d
4-1-77t

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Name—RILEY, Ralph Hospital No. 2E5

## PHYSICAL EXAMINATION

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HOSPITAL REGULATION:

All Positive and Important Negative Findings Shall Be Recorded

Date 3-1-77 [sic]

ORDER OF RECORDING:

1. General 2. Skin 3. Eyes 4. Ears 5. Nose 6. Mouth 7. Throat 8. Neck 9. Chest 10. Heart 11. Abdomen 12. Genitalia 13. Lymphatic 14. Blood Vessels 15. Locomotor 16. Extremities 17. Neurological 18. Rectal 19. Vaginal 20. Diagnosis 21. Signature

---

On examination the patient is alert and oriented. He appears extremely anxious and appears in pain. He was even unable to move on the stretcher.

Prior to my arrival the ER physician had given him 100 mg. of Demerol and 25 mg. of Vistril and this has calmed him down a little. The patient says this had not even touched the pain.

HEAD AND NECK: Normal cephalic. The scalp is clear. The neck shows marked decrease in the range of motion to the rotational movements with tenderness on the midline.

THYROID: Not palpable.

CHEST: Normal expansion.

HEART: Sounds are normal. S1 is normal. A2 is greater than P2.

ABDOMEN: Soft, bowel sounds are active.

Neurology of the upper extremities is unremarkable.

Examination of the back reveals some spasm and tenderness throughout the lumbar area. This is more severe at

the lumbosacral area. Motion could not be tested. Examination was performed only on the prone and supine positions because the patient was barely able to move.

Straight leg raising test was 30 on each side and the maneuver is negative. The reflexs are present. The sensation is objectively normal.

DIAGNOSIS: Acute Lumbo-sacral Strain

/s/ G. SANCHEZ
G. Sanchez, M.D.

GS/dlh
4-1-77t
3-31-77d

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Name—RILEY, Ralph

PHYSICIAN'S MEMORIAL HOSPITAL

## FINAL SUMMARY SHEET

NAME: RALPH RILEY

HOSPITAL No. 46055

ADMISSION DATE: 3-31-77

DISCHARGE DATE: 4-09-77

ATTENDING PHYSICIAN: G. E. SANCHEZ, M.D.

CHIEF COMPLAINT: Neck and back pain.

HISTORY: Mr. Riley is a 53-yr. old male that for the last few days prior to admission has been complaining of low back pain that started without significant history of injury. On March 30, 1977, he mowed his lawn and had some soreness on his back that was more severe than usual. On March 31, 1977, he was just working around the garden and he stated that his back locked on him with fierce pain that made him unable to move. He could not even sit and had to lay against the counter until the Rescue Squad came and picked him and brought him to the Emergency Room.

In addition, he has also been complaining of neck pain of diffuse location which is more severe on turning movements. The patient has had problems with his neck since 1970 and was admitted to this hospital once because of symptoms suggestive of radiculopathy. Following discharge he has been followed in the office on outpatient basis. His symptoms have been controlled fairly well with medication, physical therapy and postural exercises.

PAST HISTORY: His father died at the age of 72 of diabetes. The mother is 66 and has heart disease. He has four sisters, 2 have high blood pressure. The patient had surgery on the left leg from a war wound. He had a fracture of the right shoulder and a fracture of the right arm. The patient is allergic to Penicillin.

REVIEW OF SYSTEMS: The patient complained of occasional headaches without visual disturbances. The patient has had a history of chest pain in the past and he was diagnosed as having a sliding hiatal hernia. No signs of acute myocardial infarction were ever found, although he has been in ICU for chest pain.

PHYSICAL EXAMINATION: On examination the patient is alert and oriented. He appeared extremely anxious and in pain. He was even unable to move on the stretcher. Prior to my arrival in the Emergency Room, the physician had given him 100 mg. of Demerol and 25 mg. of Vistril and this had calmed him down a little bit. The patient says that the medications has not even touched the pain.

Head and neck—normocephalic, scalp is clear. The neck shows marked decrease in the range of motion to rotational movements with tenderness in the midline. Marked paraspinal muscle spasm is palpable. There is no thyroid or lymph node enlargement. The chest has normal expansion. The heart sounds normal. S1 normal. A2 greater than P2. Abdomen soft, bowel sounds active. Neurological of the upper extremities is unremarkable. Examination of the back revealed some spasm and tenderness through out the lumbar area. This is more severe at the lumbosacral angle. Motion could not be tested. Examination was only performed on the prone and supine positions, because the patient was barely able to move. Straight leg test ws [sic] 30° on each side and the lassage's [sic] maneuver was negative. The reflexes were present. The sensation was objectively normal.

LABORATORY EXAMINATIONS: The chemical profile was essentially within normal limits. The RPR was non-reactive. The CBC showed a hemoglobin of 14.7, hematocrit 44, WBC count was 6,900 with 9 bands, 70 segs, 3 eosins, 2 basos, 16 lymphs, the platelet count was adequate. The urinalysis was within normal limits.

RADIOGRAPHIC EXAMINATIONS: X-ray of the cervical and lumbosacral spine were taken. The cervical spine showed degenerative arthritis on the lumbosacral spine. There are no acute findings.

ADMITTING DIAGNOSIS: Acute lumbosacral strain. Cervical spondylosis. Hiatal hernia.

HOSPITAL COURSE, TREATMENT AND PROGRESS: The patient was admitted to the hospital and placed on bedrest with pelvic traction and medications in the form of Valium and Demerol. Initially the pain was described as constant with the patient complaining most of the time. Neurological examination failed to yield evidence of neurological deficit. Gradually the symptoms of the neck improved first and then his back and then physical therapy was started with intermittent cervical traction, ultrasound and moist heat with postural exercises and the condition of the patient improved to the point that he can be discharged to be followed in the office with the following instructions:

1. Bedrest with moderate activity.
2. Use brace when up that has been fitted here.
3. Take Valium and Tylenol #3 for pain.
4. Heating pad and firm matress. [sic]
5. Return to the office in about 10 days for evaluation.

/s/ G. E. SANCHEZ
G. E. Sanchez, M.D.

GES/cd
T: 4-221-77 [sic]
D: 4-21-77

OMB Approval No. 44-R1272

SA 322

# EMPLOYEE'S CLAIM FOR COMPENSATION

DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION
OFFICE OF WORKERS' COMPENSATION PROGRAMS

1. OWCP No. 100376

2. Carrier's No.

SEE INSTRUCTIONS ON REVERSE

3. Name of person making claim (Type or print): First: Ralph; Middle initial: E; Last: Riley

4. Date of injury (Month/day/year): November 19, 1975

5. Claimant's address (Number, street, city, state, ZIP code): Route 1, Box 46A, Indian Head, Maryland 20640

6. Marital status: married

7. Sex: [X] Male [ ] Female

8. Age or date of birth (Month/day/year): 1/1/24

9. SOCIAL SECURITY NUMBER (Not required by law): 195 | 22 | 3843

10. Did injury cause loss of time beyond day or shift of accident? [X] Yes [ ] No

11. On date of injury give: a. Hour began work [ ] A.M. [ ] P.M. 2:30 b. Hour of accident [ ] A.M. [X] P.M. c. Did you stop work immediately? [ ] Yes [ ] No

12. Date and hour pay stopped [ ] A.M. [ ] P.M.

13. Date and hour you returned to work: temporary total disability 11/19/75-present

14. Occupation (Job title: longshore worker, welder, etc.): Sheet Metal

15. Injured while doing regular work? [X] Yes [ ] No (If "No," explain in Item 24)

16. Wages or earnings when injured (Include overtime allowances, etc.): a. Weekly: $ 291.07 b. Total earnings during year immediately before injury.

17. Has 3rd party or other claim been made because of this injury? [ ] Yes [ ] No

18. Number of years you worked for this employer: 2 mos.

19. Number of days usually worked per week:

20. Name of supervisor at time of accident: John Fury

21. Earliest date supervisor or employer knew of accident: Nov 19, 1975

22. Were you employed elsewhere during the week injured? [X] No [ ] Yes (If "Yes," state where and when on reverse.)

23. Exact place where accident occurred (Street address, city, town. Name of vessel, pier, terminal, etc.): Walter Reed Hospital, Washington, D.C.

24. Describe in full how the accident occurred (Relate the events which resulted in the injury or occupational disease. Tell what the injured was doing at the time of the accident. Tell what happened and how it happened. Name any objects or substances involved and tell how they were involved. Give full details on all factors which led or contributed to the accident. If more space is needed, continue on reverse.): Lifting duct work with co-worker, weighing approximately 500 pounds, felt sharp pain in neck and sat down.

25. Nature of injury (Name part of body affected--fractured left leg, bruised right thumb, etc. If there was a loss or loss of use of a part of the body, describe.): Cervical neck

26. Have you received medical attention for this injury? [ ] No [X] Yes (If "Yes," give name and address of doctor, clinic, hospital, etc.): Drs. A. Pavot, 1310 Southern Ave, SE Wash, DC; H. Burke, La Plana, Md; L. Naguigad, Oxon Hill, Md.; R. Sealattar, Wash, DC; Sanchez, La Plata, Md.; Herbert Misorsky, Oxon Hill, Md.

27. Were you treated by a physician of your choice? [X] Yes [ ] No

28. Will such treatment be furnished by employer? [ ] Yes [ ] No

29. Are you still disabled on account of this injury? [X] Yes [ ] No

30. Have you worked during the period of disability? [ ] Yes [X] No

31. Have you received any wages since becoming disabled? [ ] Yes [ ] No (If "Yes," give dates on reverse.)

32. Has injury resulted in permanent disability, amputation or serious disfigurement? [ ] Yes (Describe on reverse.) [ ] No

33. Name of employer (Individual or firm name): Federal Sheet Metal Inc.

34. Nature of employer's business:

35. Address of employer (Number, street, city, state, ZIP code): Walter Reed Hospital, Washington, D.C.

36. If accident occurred outside the U.S., state whether you are a U.S. citizen [ ] Yes [ ] No

37. I hereby make claim for compensation benefits, monetary and medical, under the _____ Act.

Signature of claimant or person acting in his or her behalf: [signature]

38. Date of this claim (Month/day/year): 12/16/75

Section 31 of the Longshoremen's Act, 33 U.S.C. 931, provides, as follows: Any person who willfully makes any false or misleading statement or representation for the purpose of obtaining any benefit or payment under this Act shall be guilty of a misdemeanor and on conviction thereof shall be punished by a fine of not to exceed $1,000 or by imprisonment of not to exceed one year, or by both such fine and imprisonment.

Form LS-203 (Rev. Mar. 1977)

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Resp. # E Riley

RESPONDENTS' EXHIBIT E

**RESPONDENTS' EXHIBIT F**

Chart Copy

THE MORRIS CAFRITZ MEMORIAL HOSPITAL

## ROENTOENOLOGICAL CONSULTATION REPORT

Patient—RILEY, RALPH Patient Dr.—WISOTSKY

OPD Age—46 Sex—M 123377 Date—4/1/70

CERVICAL SPINE: There is scoliosis convex to the left. Degenerative changes are noted about the C5 and C6 levels. The disc interspaces are relatively well maintained. The intervertebral formulae at the C5, 6 level on the left appear to be slightly compromised. No evidence of fractures or subluxations are noted.

7206

SHEET METAL WORKERS SA 324 102 PENSION FUND
2705 Bladensburg Road, N.W.
Washington, D.C. 20011

Resp. #G
Riley

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**RESPONDENTS' EXHIBIT G**

MEDICAL EXAMINATION REPORT

(To be completed by applicant's attending physician.)

Name: Riley (Last) Ralph (First) E (Initial)

Address: Rt 1 Box 46A (Number) (Street) Indianhead (City) Md (State)

Age 52 Height 6' Weight 180 lbs

1. HISTORY

(a) Date present illness began or injury occurred April 1970 Pati lost intermittent time from work but has been totally disa
(b) Date patient stopped work since November 19 1975.
(c) If illness, give previous history long history of arthriti cervical spine

2. GENERAL CONDITION

| | At first visit (date) | At present (date) |
|---|---|---|
| (a) Ambulatory x | | |
| (b) Confined to house | | |
| (c) Bedridden | | |

3. SYMPTONS (Give all details as to type, description, frequency, aggravation and ameliorating factors, etc., with dates.)
pain at back of neck radiating to both arms, especially left; severe, disabling depressive syndrome; peripheral vascular insufficiency; hiatus hernia

4. FINDINGS ON PHYSICAL EXAMINATION (Give approximate dates.)

acute depressive syndrome

diagnostic studies made over the last 5 years

5. FINDINGS ON LABORATORY EXAMINATION (Give approximate dates.)

| | | Findings | Dates |
|---|---|---|---|
| (a) | Urine | diagnostic studies made over a period of the | |
| (b) | Serologic test for Syphilis | normal | |
| (c) | Blood Count | normal | |
| (d) | Blood Chemistry | Normal | |
| (e) | X-Rays and EKG (submit records- they will be returned) | osteoarthritis of cervical spine wit narrowing of cervical interspaces | |
| (f) | Special Procedures | | |
| (g) | Other | | |

6. WAS PATIENT HOSPITALIZED? x (Yes) ___ (NO) (If yes, submit official hospital abstract.)

Name of hospital Physician's Hospital

Address of hospital La Plata Md

Admission date 11-20-75

Other identifying data

7. DID PATIENT UNDERGO OPERATION? ___ (Yes) x (NO) (If yes, give operative findings and tissue diagnosi

SA 326

8. COMPLETE DIAGNOSIS (Follow D[illegible] scheme of American Heart Association if cardiac, or National Tuberculosis Association if tuberculosis.)

degenerative osteoarthritis cervical spine

cervical radiculitis

disabling, anxiety depressive syndrome

~~peripheral vascular insufficiency~~

hiatus hernia

9. TREATMENT (Give type and dates.) formal physical therapy to cervical spine; reassurance; limitation of activity

Date of first visit 1970

Frequency of visits as necessary

Date of last visit 2-9-76

Are you still the physician on the case? ___x(Yes) ____(No)

Has the patient refused any treatment? ____(Yes) ___x(No)

10. COURSE OF ILLNESS OR INJURY gradually progressive
(To What degree?)

Recovered

Improving

Not changing

Downhill

11. DEGREE OF DISABILITY

(a) Has the patient been able to do any kind of work since the illness or injury? ____(Yes) ___x(No)

(b) If yes, give date of termination of total and complete disability.
indefinite

(c) If yes, what kind of work does (did) the patient perform?

(d) If no, do you think the patient will be able to work in the future?

____(Yes) ____(No) If yes, when?

SA 327

12. GIVE NAMES AND ADDRESSES OF ALL OTHER PRACTITIONERS OR PHYSICIANS WHO HAVE ATTENDED THE PATIENT IN THIS ILLNESS OR INJURY.

Dr. A Pavot, 1310 Southern Ave SE Washington DC

Dr. H Burke, La Plata Md

Dr. L Maguigad, St. Barnabas Rd., Oxon Hill Md

~~Dr. R. Sealettar, Washington, DC~~

Dr. Sanchez, La Plata Md

13. ADDITIONAL NOTES:

I hereby certify that the above answers are true and complete to the best of my knowledge and belief.

Herbert Wisotsky

Date 2-16-76 Signature Herbert Wisotsky M.D.

Address 6188 Oxon Hill Rd Oxon Hill

UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES

Case No. 78-DCWC-82
OWCP No. 100376

In the matter of:

RALPH RILEY, *Claimant*,

vs.

FEDERAL SHEET METAL, *Employer*,

and

INSURANCE COMPANY OF NORTH AMERICA, *Carrier*.

Oxon Hill, Maryland
Friday, May 5, 1978

DEPOSITION OF: HERBERT WISOTSKY, M.D.

called for oral examination by Counsel for the Claimant at 6188 Oxon Hill Road, Oxon Hill, Maryland, 20021, beginning at 1:30 p.m. on Friday, May 5, 1978, before Judith A. Derenberger, RPR, a Notary Public in and for the State of Maryland, when were present on behalf of the respective parties:

FOR THE CLAIMANT:
ASHCRAFT, GEREL & KOONZ
By: JAMES F. GREEN, Esquire
2101 L Street, N. W.
Washington, D. C. 20037

[2] FOR THE CARRIER AND EMPLOYER:
RICHARD W. GALIHER, JR., Esquire
1215 Nineteenth Street, N. W.
Washington, D. C. 20036

CONTENTS


| | Examination on Behalf of: | |
|---|---|---|
| *Witness:* | CLAIMANT *(Mr. Green)* | EMPLOYER-CARRIER *(Mr. Galiher)* |
| Dr. Herbert Wisotsky | 3, 29 | 11, 32 |


EXHIBITS


| *Marked for Identification:* | Page |
|---|---|
| Wisotsky Deposition Exhibits 1 & 1-A (Reports, 4-23-70 & 4-1-70) | 13 |
| Wisotsky Deposition Exhibit 2 (Report, 12-9-75) | 16 |
| Wisotsky Deposition Exhibit 3 (Report, 1-21-76) | 16 |


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[3] Thereupon,

**Herbert Wisotsky, M.D.**

having been duly sworn by the Notary Public, was examined upon his oath and testified as follows:

EXAMINATION ON BEHALF OF THE CLAIMANT

By MR. GREEN:

Q. Doctor, would you please state your full name and professional address for the record.

A. Herbert Wisotsky.

6188 Oxon Hill Road, Oxon Hill, Maryland.

I am a physician.

Q. Doctor, as you were just told again my myself, we are here on the [sic] a Workmen's Compensation claim and if

there are any questions that I am asking that you don't understand, please ask me to repeat it and I will be happy to do so before you answer.

Could you, Doctor, give us a brief resume of your professional background.

A. Graduated from New York University in 1946. Started general practice in Oxon Hill, Maryland, 1949. Been here since.

Q. Doctor, are you a member or fellow of any Boards, or societies?

A. American Medical Assocition. D. C. Medical Society. Prince George's Medical Society.

Q. Doctor, are you licensed to practice in any other [4] states or territories other than Maryland?

A. I am licensed to practice in Maryland and the District.

Q. Do you engage, sir, in the practice of any particular specialty in medicine?

A. I do family practice. I understand that is getting to be a specialty these days.

Q. I understand that it is, Doctor.

MR. GREEN: Do you have any questions on voir dire?

MR. GALIHER: Are you an internist, Doctor?

THE WITNESS: No.

MR. GALIHER: Are you a member of the Board of the American Academy of Family Practitioners?

THE WITNESS: American Board of Family Practice.

MR. GALIHER: When did you secure that certification?

THE WITNESS: 1955.

MR. GALIHER: What hospitals are you staffed at?

THE WITNESS: Greater Southeast Community Hospital, Southern Maryland Hospital.

MR. GALIHER: Is that the new one down here?

THE WITNESS: Yes.

MR. GALIHER: I don't have any other questions at this time.

By MR. GREEN:

Q. Doctor, I would like to direct your attention to records that you may have with you concerning Ralph Riley, [5] your patient. Specifically, Doctor, I would like to ask you if you saw Mr. Riley for a work injury in November of 1975.

A. I saw Mr. Riley subsequent to that injury. He came to see me December 5, 1975, having been discharged from the hospital. Just about that. Discharged from La Plata Hospital. Well, Physicians Memorial Hospital in La Plata, Maryland.

History I got from him was he was admitted approximately three weeks before that——

MR. GALIHER: The history you got from him, is this what you are relating?

THE WITNESS: Yes.

MR. GALIHER: Okay.

THE WITNESS: It was under the care of Dr. Burke.

By MR. GREEN:

Q. Doctor, did you obtain a history from Mr. Riley concerning his work history?

A. Just very briefly he stated he was injured at work. Went to the hospital and was under the care of Dr. Burke.

Q. What did you do for Mr. Riley when you saw him, sir?

A. I saw Mr. Riley on December 5 and at that time he was complaining of intermittent shaking chills for the preceding week. I had him have a series of lab studies done, a

complete blood count, blood cultures to eliminate any type of infection that was causing this problem.

I decided and since those tests were normal, decided [6] that he had a marked anxiety depressive reaction to his longstanding arthritis which had been recently exacerbated and referred him to a specialist for his arthritis and cervical radiculitis and also referred him for psychiatric care in the hope that that could help him cope with this problem.

Q. Doctor, it is your testimony he presented complaints to you on that visit of cervical arthritis problem and of cervical radiculitis?

A. Yes.

Q. What physician did you refer him to, Doctor?

A. Dr. Raymond Scalettar, who is an expert rheumatologist in Washington.

Q. Doctor, you referred to the fact that Mr. Riley had a long-standing arthritis condition.

A. Yes.

Q. Would you be able to tell, sir, from a review of your notes when you first came to diagnose that condition?

A. From a quick survey of the notes I see I wrote a letter in July of '77 saying since 1970 this man has had to lose work intermittently because of his cervical arthritis, so it goes back at least until '70.

Q. Doctor, in that letter of July 16, I believe to the insurance company of North America, you indicated in the second full paragraph beginning in November 1975, that paragraph, Doctor, you indicated the history of an injury to Mr. [7] Riley.

A. That is true.

Q. And could you repeat for this record what that history was, sir?

A. In November 1975 this patient was struck on the back of the neck while working and as a result of this injury

was hospitalized at Physicians Memorial Hospital, La Plata, Maryland, under the service of Dr. Henry L. Burke.

Q. Doctor, do you have a recollection as to how you obtained that history of a striking injury to the back of Mr. Riley's neck?

A. The only place I could have gotten that history was from the patient.

Q. Did you refer Mr. Riley to any other specialist as a result of his arthritis and cervical radiculitis?

A. If we go down the rest of the paragraph.

Q. Yes, sir.

A. During that hospitalization the patient was seen in consultation with Dr. Sanchez who is an orthopedic surgeon practicing in La Plata, Maryland. He checked him of course at that time.

You are looking for previous orthopedic or arthritic consultations?

Q. Yes, sir, or any previous indication of the severity of Mr. Riley's arthritis.

[8] A. Well, as I say I have been treating him for this particular condition at least since 1970 and usually I will continue to treat the patients here in this office for a disease like degenerative osteoarthritis with nerve root pressure unless they become worse or incapacitated and then I will send them out for a referral.

In this particular case I sent Mr. Riley to the physical therapy department at Cafritz, at that time was Cafritz Memorial Hospital, Washington, D. C. The physiatrist Alfred Pavot wrote a letter about his findings and impressions on April 23, 1970.

Q. Doctor, did Dr. Pavot confirm your suspicion that Mr. Riley had cervical arthritis?

A. Yes, he did. He did a lot of testing and he repeated the x-rays of his cervical spine. His diagnoses were de-

generative arthritis of the cervical spine, probable cervical radiculitis and left trapezius decompensation.

He recommended he be placed on a program of physical therapy, re-evaluation at his clinic from time to time. As I remember he did those follow-up examinations.

Q. Doctor, from that point in 1970 forward Mr. Riley continued to see you in this office, sir?

A. Yes.

Q. Doctor, in your letter of July 16, 1977, to the Insurance Company of North America you indicated an opinion as [9] to whether or not the accident of November 19, 1975 affected Mr. Riley's condition that you had diagnosed and treated since 1970. I would like to ask you now, Doctor, based on the history that the patient gave you of his injury in 1975, November of 1975, at work and the medical examination that you have done on Mr. Riley and treated him over the course of years, do you have an opinion you can state with a degree of reasonable medical certainty as to whether or not Mr. Riley's work injury in November 19, 1975, aggravated his pre-existing osteoarthritis of the cervical spine to the point of total infirmity?

MR. GALIHER: Objection. For the record the doctor's report does not say total infirmity. It just says that it definitely aggravated the pre-existing osterarthritis [sic] of the cervical spine. I think you are asking two questions at the same time.

MR. GREEN: I may be so let's separate that and deal with any possible objection.

By MR. GREEN:

Q. Doctor, given the basis for your opinion that I have already stated for the record, do you have an opinion as to whether or not the accident of November 19, 1975, aggravated Mr. Riley's pre-existing arthritic cervical condition?

A. Yes. I am confident that it did.

Q. And your opinion is it did?
[10] A. Yes.

Q. Do you have an opinion based on the information already in the record whether or not the accident of November 19, 1975, aggravated Mr. Riley's pre-existing osteoarthritic condition of the cervical spine to the point of total infirmity from work?

MR. GALIHER: Objection.

You can go ahead and answer.

By MR. GREEN:

Q. Doctor, you may answer over the objection.
A. I am confident that the injury aggravated his preexisting arthritis. The man is certainly disabled from working. If you are asking me what the injury that he received, the cause of his present total disability, I would have to say probably yes.

Q. All right, sir. Could you say that probably yes with a degree of reasonable medical certainty?
A. I think with a relative certainty, probably yes.

Q. Doctor, do you have an opinion based on your treatment of this man as to whether or not his arthritic condition will improve?
A. I do not feel that his arthritic condition will improve. Arthritis, of course, has remissions and exacerbations and is a peculiar disease in general but in this particular patient I do not feel that he will improve sufficiently to [11] where he will be employable.

Q. Doctor, do you have a recollection today suggesting to Mr. Riley after his injury in 1975 to retire from his occupation as a sheet metal worker?
A. Oh, yes. I know I have told Mr. Riley to retire from his occupation.

Q. And at Mr. Riley's request I would imagine, sir, did you complete a form for Sheet Metal Workers Local 102 Pension Fund? Do you have a recollection of doing that, sir?

A. I completed retirement forms for Mr. Riley both from his union and work and as well I think for Social Security.

Q. Yes, sir.

MR. GREEN: I have nothing further on direct.

Thank you, Doctor.

## EXAMINATION ON BEHALF OF THE EMPLOYER AND CARRIER

By MR. GALIHER:

Q. Doctor, could we take about a two minute break and could I see all the records you have including your treatment cards of Mr. Riley?

A. Sure. They go back to 1966. That is the beginning. As you see out here in the country we have brief records. It is not like some of the city physicians.

(Whereupon, a discussion ensued off the record.)

By MR. GALIHER:

Q. Doctor, what I would like to do first is start with [12] your treatment records and have you indicate from there the first time that Mr. Riley in your treatment cards ever complained about any kind of arthric [sic] problem.

A. March of 1970.

Q. And at that time did you have X-rays taken?

A. Someplace I think I had some old X-rays on him. X-rays were taken in April of 1970.

Q. What did they reveal?

A. X-rays of the cervical spine show arthritic changes with boney spur formation between C-4 and C-5 and C-5 and C-6. There seems to be some encroachment on the

intervertebral on the neuroforamina at the level of C-4 and C-5 and to a lesser extent 5 and 6.

Q. That information you are reading from is connected with Dr. Pavot's report?

A. Yes. Apparently what I did was send him over to Dr. Pavot for evaluation of what was apparent to me to be a cervical arthritis and what he does each time is run X-rays of the involved areas.

Q. I see.

I would like to ask that the reporter mark the Dr. Pavot's report with the X-ray report you just read as Deposition Exhibit 1.

I would like to get copies. If we can't get copies today, maybe you can send them to us and the court reporter. [13] Some of the medicals you have shown today we have not seen before.

A. Reports of the X-rays.

Q. Yes.

A. I think that would be easy.

Q. And Dr. Pavot's report.

Dr. Pavot mentions giving him physical therapy for a period of time. Did you or Dr. Pavot follow him on the physical therapy?

A. I don't know. I have no record of following him here. I feel that he actually went to Pavot for that series of physical treatments but I have no record here.

Q. Okay.

Let me have those reports, if I might, and we will have them marked Number 1.

This will be the report of Dr. Pavot. The Morris Cafritz X-report dated April 1, '70 and there is also D.C. General report dated February 14 but it doesn't say what year.

A. D. C. General.

Q. February 29, '72 is when this X-ray concerning broken ribs was.

A. Oh.

Q. Could I have this marked.

(Whereupon, the reports were marked for identification [14] as Wisotsky Deposition Exhibits 1 and 1-A.)

By Mr. Galiher:

Q. Doctor, would you look through your notes and tell me the next time you have any reference to the arthritis problem.

A. We are talking about 1970. I saw him in May and then in July.

Q. What was the complaints and treatment at that time?

A. He was improving in May. I saw him in July and he had recurrent pain in the back of the neck following an injury in his car.

Q. Then when did you see him after that?

A. November of 1972.

Q. November '72 what did you see him for?

A. He had pain again in the back of his neck.

Q. Did he give you any particular history at that time?

A. No. Just complained of pain in the back of the neck. He had on physical examination a cyst on the back of his neck.

Q. What treatment was recommended and given at that time?

A. Symptomatic treatment for the pain and discomfort.

Q. Would that be analgesics?

A. Analgesics.

Q. Now, would you keep going to the next time that he made any reference or you made any reference to your

notes to [15] his neck or arthritis and if you come across the anxiety depressive note, pick that up along the way.

A. Okay.

The next time I saw this man was August '74. He complained of left neck, left chest, left arm pains and I gave him again some analgesic for that after checking him out and feeling comfortable that he had no severe underlying problem.

In June I will take that back. In May 1975 he was off work because of arthritis pains and in June of '75 I saw him here in the office again off work because of pain in his neck, shoulders and arms and also his knees at that time.

Q. When did you next see him?

A. This is all 1975.

Q. When did you see him next after June '75?

A. July of '75 he came in because of arm and shoulder pains. December of '75 I have a note about his anxiety.

Q. What was the date of that?

A. December 1, 1975.

Q. Would you read us that note.

A. "Anxiety."

Q. That is all, "Anxiety"? One word?

A. One word. Snap diagnosis.

Q. After December 1, 1975, when did you next see him?

A. December 5, '75. That is when he came in with the [16] shaking, chills.

Q. Would you read us that complete note?

A. "Shaking, chills, intermittent one week. Hospitalized three weeks ago at La Plata Hospital, possible cardiac disease. Discharged from hospital with no diagnosis of heart disease."

Then I sent him to the laboratory for a complete blood-count, SMA 12, blood cultures. Also to Scalettar for the

arthritis consultation and to Maguigad which would be for psychiatric consult.

Q. Now, I would like to have marked Dr. Scalettar's report dated December 9, 1975, as Deposition Exhibit Number 2; and Dr. Maguigad as Number 3.

(Whereupon, the reports were marked for identification as Wisotsky Deposition Exhibits 2 and 3.)

By Mr. Galiher:

Q. Now, Doctor, on December 1, 1975, or December 5, 1975, did you receive any history from Mr. Riley of an injury at work?

A. I have no record on the chart of having received any history from him about an injury at work.

• • • • • • • • • • •

[17] Q. Now, when after December 5, '75, did you next see him?

A. December 12, 1975.

Q. What was happening at that time?

A. I have a note here, "Continues disabling anxiety state."

I have a note also that I had gotten Dr. Scalettar's letter confirming the osteoarthritis.

Q. Okay.

Now, if you would refer to Dr. Scalettar's letter a minute, does Dr. Scalettar mention anything about an injury on the job to his neck at work?

A. No.

Q. When did you next see Mr. Riley?

A. January 2, 1976.

Q. What was his condition at that time?

A. Still depressed. I continued his medication for his arthritis and an antidepressant.

Q. What was his depression about during that period of time; if you recall?

[18] A. Mr. Riley was depressed because he was unable to work and function. He felt that he was just physically unable to work any longer and this or at this [sic] point he was about 42 years old and this [sic] I feel confident this was depressing him.

Q. Was this his initial problem when he came in to you on December 1 when you said anxiety or on December 12th?

A. Yes. He was nervous, tense, upset, unable to eat, depressed, and in talking to him the only thing I could find that was depressing him was his physical disability.

Q. Okay.

When did you first become aware of the accident that happened to him that he reported what happened at work? Do you have anything in your notes about that?

A. I have nothing in my notes and I don't know how I could answer that question. We may have discussed it any of those times he came in upset to see me that month following his hospitalization, but I have nothing in my notes to confirm that.

Q. Well, initially when you were answering Mr. Green's questions, you indicated that when he came in on December 5, '75, that you read a history that he was injured at work, taken to a hospital under Dr. Burke's care. Where did you read or get that information from if it is not in your handwritten notes?

A. Was that my letter to someone?

[19] Q. Yes.

A. I must have gotten that information from Mr. Riley.

Q. That letter is written July 16, 1977. Can you tell us when in the interim period between November of 1975 and July 16, '77, when you wrote that letter to the Insurance Company of North America you received this information?

A. No. I can't. This had to have been verbal information from the patient.

Q. Well, now I notice in your records that periodically throughout the time you have rendered reports to the sheet metal local fund or something like that with respect to his treatment.

A. Unfortunately that is true. He would come in frequently for those reports.

Q. What would those reports be? Would they be verification of time off from work or what was the nature of these different reports?

A. They would be not only verification of time off from work if he lost time but also stated he was still having a problem with his neck.

Q. Now, would you look through your records, Doctor, and I don't think it will take too much time and give us the dates of each time you rendered such a report to the Sheet Metal Workers.

It is in the corner by that little line here.

[20] A. Every time my nurse types it up from the dictating machine?

Q. Right.

A. 6-16-75. 6-17-75. 8-1-75.

You want just the Sheet Metal Workers and not the Aetna?

Q. Either one. Do Aetna also if you would.

A. Okay.

12-5-75. 3-12-76. 8-6-77. 10-28-77.

Did I give you 4-11-77?

Q. No.

A. 4-11-77.

3-15-78. 4-17-78.

Q. Now, were all of these reports you mentioned beginning June 15, '75, to your recollection dealing with the

arthritis and the cervical problem he complained about since 1970?

A. I am confident that this dealt with the arthritis every single time, every time.

Q. How about before June 16, '75, that was the first date you gave us. Can you go back further in your records and see if there are any before that date?

A. Here is one to Sheet Metal Workers, August 1974. One in November of 1974 which I think predated the date that you people are interested in.

12-5-72. May 25, '70.

[21] (Whereupon, at the Doctor's request a recess was taken.)

By Mr. Galiher:

Q. Doctor, we were on your treatment card and we were on the date of January 2, 1976, which you follow up there on the treatment card.

A. January 2, '76, he came in depressed. I continued his medication for his arthritis and his depression. I saw him again February 6. He was slightly improved. I continued the medication.

Q. What was his next visit after that?

A. February 9 at which time I wrote out or sent out a letter to somebody for his retirement.

Q. Now, let me show you—I don't have the back page of it but this is a document that has been marked in the transcript as Respondent's Exhibit G and the back page is dated February 16, 1976.

Mr. Green will confirm that for you.

Is this the retirement summary that you wrote out on February 9, 1976? Why don't you show him your copy.

Doctor, Mr. Green will show you the last page of that document.

A. Good.

Q. Do you remember filling out that document?

A. Vaguely.

[22] Q. Did that document bear your signature?

A. Yes. We signed it.

Q. Now, Doctor, if you would, had Mr. Riley ever discussed with you prior to February 9, 1976, retirement for any reason?

A. February 9, 1976 is a couple months after his accident. This of course would all be my recollection. I feel that I talked with Riley about his retiring even before this accident because of his cervical arthritis. I know my arguments may have been a little reinforced after the accident because he came in and he was in worse shape than he had been before.

Q. Doctor, you don't have in your medical records your treatment records that we have gone through the date of this accident. We have covered the period up until you wrote the retirement summary. Now, the retirement summary itself does not mention, does it, anything about an accident as such?

A. No. It does not.

Q. So would it be fair to say even at that time when you wrote this retirement summary that you didn't know he had had an accident at work at that time?

A. No. I don't think it would be fair to say that. I may not have put it in here and I may not have put down the fact the accident is the reason why he should have retired. I thought he should retire because of the disability. That is [23] the arthritis, radiculitis, pressure and the cerebral vascular insufficiency.

Q. Doctor Maguigad's report previously marked in this case as Deposition Exhibit Number 3 indicates a manifestation of some type of a—for want of a better word——

A. Neurosis.

Q. Yes. You hit it. A cardiac neurosis. When did this first become evident to you as his treating physician?

A. Well, if you are going to restrict yourself to a cardiac neurosis, I think you will have to say basically that dates from his hospitalization in November of '75.

Q. Did he have any concern prior to that hospitalization in November '75 that you are aware of of borderline high blood pressure or any other findings which you may have made to him suggestive of the possibility that he should watch his health with regard to a heart situation?

It is noted in other records that he has a family history and this type of thing.

A. On occasion he would come in here and his blood pressure would be a little elevated. I would really downplay that a little bit because he would come in on other occasions and his blood pressure would be normal and I hate to overtreat my patients because that way you really make neurotics out of them.

Q. Was this blood pressure a problem you had at least [24] observed and noted?

A. On a random finding he had a blood pressure in August of 150 over 110 which I think anybody will say is a little elevated, but then he would come in here a few days later and it would be 130 over 90 which is certainly normal.

Q. Did he have a family history also of heart disease?

A. I don't remember that.

Q. Okay.

Now, what was the—You have testified in this case that in your opinion what you described or what you received as the description of what happened to him in November of

1975 on the job aggravated his cervical arthritis; is that correct?

A. That is true.

Q. Now, to what extent was that aggravated?

A. I don't think I can answer that question.

Q. Why not?

A. Because I really don't know enough about percentages on disability on these sprain, strains and arthritis problems to give you a percentage. All I can tell you is that it certainly aggravated him enough so he was disabled and it also I am confident, influenced his anxiety too. The entire picture I know was aggravated by his accident or I I feel it was anyway.

Q. Having known and said in this deposition that aggravation of arthritis is a—It is a remission situation, [25] you aggravate it and then it is in remission and then back and forth; is that correct?

A. Yes.

Q. Do you have any opinion as to if Mr. Riley sustained an aggravation of his arthritis sometime in November of '75 as your history in the letter of July 16, '77 indicates? Can you tell us for what duration looking at your notes that this aggravation of November '75 extended?

A. I don't think I could tell you that even if I looked at the notes. I feel whatever happened to him in '75 aggravated his neck. Gave him pain and started off a reaction of anxiety depression on this man which in itself is disabling and he just went down hill from there. He worried about what was going to happen to him and what was happening to him and I feel not only was his cervical arthritis and cervical radiculitis and associated pain disabling to him, but the fact he was upset about it was equally disabling.

Q. Doctor, when he went to Dr. Maguigad in January 21, 1976, he told Dr. Maguigad that he felt his medical condition had been gradually deteriorating since 1969 and

seemed to feel that in the last few months he has been increasingly fearful of the safety particularly at work. Has he ever discussed that with you?

A. Yes.

Q. About his feeling that his health was deteriorating?

[26] A. Yes. Riley told me that on many occasions. A lot of my patients tell me their health is deteriorating.

Q. What was deteriorating is this, the cervical arthritis problems or were there any other conditions he felt were deteriorating factors also?

A. As I remember it not only was his neck bothering him intermittently and especially when he did some work and I recommended he retire from this job before this, but his anxiety was certainly bothering him enough so that he felt different things in his environment and health were failing.

Q. This has been a long-term situation with Mr. Riley; is that correct?

A. Yes.

* * * * * * * * * *

[30] Q. However, is it your testimony that you have a recollection of Mr. Riley telling you of a work injury shortly after he came under your care in December of 1975?

MR. GALIHER: Objection. I don't think that is what the testimony has been.

By MR. GREEN:

Q. I said if it has been your testimony.

The doctor can answer the question if it has been his testimony, his recollection or not.

A. I know Mr. Riley told me that he had an injury at work and subsequent to that had all of this hospitalization, medical workup down in La Plata, orthopedic consultation, cardiac consultation and was coming back to me for follow-up.

[31] Q. Doctor, do you have a recollection of speaking to Dr. Sanchez concerning Mr. Riley's treatment?

A. No. I don't think I ever spoke to Dr. Sanchez.

Q. Doctor, again for the purposes of the record when you made your notations to the Sheet Metal Fund, the report to be sent to them, is that the insurance fund for the Sheet Metal Workers?

A. Yes. That is a slip of paper and that is why there is not a copy in my record but I don't keep many copies anyway. The patient comes to me with a form to whatever organization he wants it reported to and I dictate on that and send the form out of here. The girl usually makes a note on the chart that she sent such a form.

Q. Doctor, in Dr. Maguigad's report which is Deposition Exhibit 3, in the second full paragraph of that report, Doctor, Mr. Riley presents himself on January 21st, 1976, with a neck collar on, cervical collar I would imagine. Do you have a recollection of prescribing that cervical collar for him?

A. No. I have no recollection of prescribing it. I don't know whether he was discharged from the hospital with Dr. Sanchez' recommendation that he have it or whether we just talked it over and thought we would put it on empirically to see whether it would help. I don't ever recall seeing him in a collar.

Q. Doctor, one final question for the record. Your last [32] time that you saw Mr. Riley in this office was on what date, sir?

A. April 17, 1978.

Q. At that time, Doctor, do you have an opinion as to whether or not Mr. Riley was capable of gainful employment as a result of his cervical arthritis?

A. At that time I felt Mr. Riley could not go to work.

Q. Thank you. I have nothing further.

## FURTHER EXAMINATION ON BEHALF OF THE EMPLOYER AND CARRIER

By Mr. Galiher:

Q. As a result of the cervical arthritis or as a result of what other conditions?

A. I have a note down here he is still totally disabled and I am confident it was the entire picture that made me feel he could not go to work. His cervical and neck pain. His anxiety. Basically those two diagnoses.

Q. Under anxiety——

A. I can't really separate those two reasons for his being unable to work. If someone has a heart attack and can't work, then of course you have one reason why the man can't work because he had a heart attack, but if the man has three different reasons all of which sort of overlie one another, it is difficult for me to pull one apart from the other and say if the man did not have this, then he could work.

Q. Do you include, Doctor, under that term anxiety the [33] cardiac neurosis?

A. I think that—I didn't mean to interrupt your question.

Q. Right.

A. But I think that cardiac neurosis is a manifestation of anxiety and whether he came in worried about his heart or whether he was worried about somebody in Baltimore going to come down to shoot him or whether he was going to be unable to do any other bodily functions, it is all a manifestation of his anxiety. The only reason we have a special name for it now the cardiologists have coined this fancy term. We send them all because we are afraid we may miss a heart attack or something.

Q. I notice in this instance you did send him to a cardiologist and I am not going to have his report marked but——

A. Dr. Nachnani.

Q. N-a-c-h-a-n-i.

This doctor saw him February 27, '78, and the doctor apparently did a stress test on him, did he, treadmill?

A. I think he did because that is one of the reasons I sent him there.

Q. What was the doctor's diagnosis, Doctor, for the record? It is the last line of that report.

A. The last line of the report just states the EKG is [34] within normal limits and a chest X-ray reveals normal heart size. His impression, would you like them?

Q. Yes.

A. Impressions are and, "I feel that pain in the chest and numbness in the arms is not cardiac in origin but may be due to cervical arthritis with radiculopathy. I do not find any evidence of peripheral arteriosclerosis. Two is hiatal hernia. Three is hypercholesterolemia and four is borderline hypertension.

Q. Basically Mr. Riley doesn't have anything that he should be worrying about as far as his heart; is that right?

A. You will never be able to convince Mr. Riley of that.

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[35]

**CERTIFICATE OF SHORTHAND REPORTER—NOTARY PUBLIC**

I, Judith A. Derenberger, the officer before whom the foregoing deposition was taken, do hereby certify the witness, Herbert Wisotsky, M. D., was by me duly sworn; that the testimony was taken by me stenographically and thereafter reduced to typewriting under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to this litigation and have no interest, financial or otherwise, in the outcome of this matter.

In witness whereof, I have hereunto set my hand and affixed my notarial seal this 15th day of May, 1978.

Notary Public in and for
Montgomery County, Maryland

My commission expires
July 1, 1978.

**WISOTSKY DEPOSITION EXHIBIT 1**

THE MORRIS CAFRITZ MEMORIAL HOSPITAL

1310 Southern Avenue, S.E., Washington, D.C. 20032

DEPARTMENT OF PHYSICAL MEDICINE AND REHABILITATION

Alfred P. Pavot, M.D., Director

*Clinical Consultation:* Ralph E. Riley
46 WM

Initial Evaluation: April 23, 1970

Referred by: Dr. Herbert A. Wisotsky

*Chief Complaint:*

(1) Pain and stiffness in the neck.

(2) Pain and numbness in both upper limbs of about one years duration.

*History of the Present Illness:*

This 46 year old, white, male patient who has been working as a sheet metal worker most of his life states that he fell off a scaffold in May, 1969 injuring the left side of his back. As he states, he had a tumor in the left upper back, which apparently was aggravated by the fall and rapidly enlarged in size and became quite painful. This eventually necessitated surgical excision in September, 1969. The post operative course was un-eventful and he went back to work eventually.

He states, however, that about the same time, that is shortly after this accident, he began to experience pain and stiffness in the neck and also began to note that he would frequently wake up and find the fingers in his right hand being asleep. He would have to shake his hand several times before regaining normal sensation. Within the next few weeks, the left hand became similarly involved.

With the passage of time, these symptoms became more and more frequent and got to the stage where several times during the day he could feel his fingers falling asleep.

On March 21, 1970, while painting at home, he again fell off a ladder and since then has had a marked exacerabation of all his symptoms.

He consulted, at that time, his family physician, Dr. Wisotsky, who prescribed local heat and an over-the-door cervical traction device which the patient has used with slight symptomatic relief.

*Past History:*

This patient states that at the age of 18 while he was in the horse Marines, he fell off a horse and was dragged by the horse for about a half a mile.

He was never involved in any car accident.

*Physical Examination:*

This is a 46 year old, white, male patient, who looks several years younger than his age. He does not appear to be in acute distress. He is mentally clear and cooperative and relates his story well.

Pulse, 80, regular in rhythmn and force, volume good. Blood pressure 130/80.

Examination of the neck reveals his left shoulder to be held at a slightly lower level than the right. He has a transverse incision scar measuring approximately 3 inches over the left scapula with dimpling and depression of the muscle manifest at that level.

Palpation of the neck reveals tenderness over the spinous processes of C-4, C-5 and to a lessor [sic] extent C-6.

The range of motion of the cervical spine is mildly limited due to pain. This is particularly so in extension and lateral flexion.

There is localized tenderness over the incision scar area.

Placing the trapezii muscles under strain, particularly the upper and middle fibers causes pain and more so on the left side than the right side.

Neurological examination of the upper limbs reveals no selective motor deficit. The reflexes are symmetrical and are two plus bilaterally.

On examination for sensation, there is a relative hypoesthesia over the index and middle fingers of the right hand.

On testing the trapezii muscles, there is some weakness demonstrated in the left trapezius muscle particularly in the middle fingers.

X-Rays of the cervical spine show arthritic changes with boney spur formation between C-4 and C-5 and C-5 and C-6. There seems to be some encroachment on the intervertebral neuroforamina at the level of C-4, C-5 and to a lessor extent C-5, C-6.

*Diagnosis:*

(1) Degenerative arthritis of the cervical spine.

(2) Probable cervical radiculitis.

(3) Left trapezius decompensation.

*Recommendations:*

This patient will be placed on a program of physical therapy consisting of application of hydrocollator packs to the neck and upper back, intermittent cervical traction, range of motion, active assistive, active and manual resis-

tive exercises for the muscles of the cervical spine, shoulder elevation and depression and postural training.

The patient will be treated three times a week for the next two weeks and will be re-evaluated at the end of this time.

Thank you for referring this interesting patient to us.

Yours sincerely,

/s/ Alfred P. Pavot
Alfred M. Pavot, M.D.

APP/sbr
4/30/70

**WISOTSKY DEPOSITION EXHIBIT 2**

WASHINGTON INTERNAL MEDICINE GROUP
a professional corporation

December 9, 1975

Herbert Wisotsky, M.D.
5418 Oxon Hill Road
Oxon Hill, Maryland

Re: *Mr. Ralph Eugene Riley*

Dear Doctor Wisotsky:

Many thanks for referring Mr. Ralph Riley to our office. Although there is no doubt that Mr. Riley has cervical osteoarthritis as manifested by his symptomatology and his x-rays, his neurological examination is within normal limits. The patient is obviously quite anxious and tense and this greatly contributes to his problem.

I would suggest that we continue cervical traction and give the patient a short course of phenylbutazone therapy.

In view of these episodes of loss of muscular control, I would suggest evaluation by a neurologist. However, I think his symptomatology may be hysterical in nature and ultimately neuropsychiatric consultation may be indicated.

Best personal regards.

Sincerely,

Raymond Scalettar, M.D., F.A.C.P.

RS:CAB

**WISOTSKY DEPOSITION EXHIBIT 3**

LEONARDO C. MAGUIGAD, M.D., P.A.

*General and Forensic Psychiatry*
5620 St. Barnabas Road, Suite 280
Marlow Heights, Maryland 20021

January 21, 1976

Herbert Wisotsky, M.D.
6188 Oxon Hill Rd.
Oxon Hill, Md.

*RE: RILEY, Ralph E.*

Dear Dr. Wisotsky:

Mr. Riley, a 51 year old married man was examined at my office on Dec. 15, 1975. He was accompanied by his wife. He brought with him medical discharge summary about his recent hospitalization at Physicians Memorial Hospital at La Plata Md.—11-20-75 to 11-25-75. He gives the history of recurrent anxiety episodes which has been increasing in frequency during the month of Dec. 1975. His last hospitalization seems to represent one of this attack where he had feelings of tightness across his chest like a "rope". He had coldness and sweating of his hands and felt like his "equilibrium was off". In describing his "nervous attack", he states that he begins shaking from his chest down to the foot after which he has "muscle cramps" and he is rendered incapacitated. This episodes apparently occurs suddenly and has no control over the same. He felt that his medical condition has been gradually deteriorating since 1969 and seems to feel that in the last few months he has been increasing by [sic] fearful of his safety particularly at work situation. He does have a strong family history of coronary morbidity and any discomfort that suggest [sic] or signify "heart attack" he easily gets stricken with fear that can escalate to panic state.

On mental status, examination he came appropriately dressed with neck collar on. He appeared moderately de-

pressed, was anxious and tight. He indicated that he increasingly have [sic] lost his confidence including driving a car. He has considerable fear about "heart attack" and truly his age and family history justifies excessive concern though it may also relate to pre-involutional state were susceptible individual have concerns about health state and bodily functions. His affect is one of anguished concern with lack of modulation and variability. Wife, who was on hand revealed that he is not as active as he use to and has lost considerbale ambition and zest in living. He exhibited no psychotic thoughts content nor bizarre behavior. He, however is obsessed and somatically preoccupied which can really impair his mental concentration to work; thus, incapacitated to effectively do his share of responsibility at work.

It is my considered opinion based on historical and clinical data that it may not be to the best interests of all concerned for him to continue working. I agree that he has RECURRENT ANXIETY EPISODES with underlying depression. I would be happy to follow this patient with you. There is a risk factor of going into deep depression if left INACTIVE enhancing only his sense of incapacitation and sense of futility. I would start him on SINEQUAN 10 mg. tid with TRANXENE 7.5 mg. one or 2 every 6 hours PRN for anxiety outburst.

Thank you for the privilege of treating with you this patient.

Very truly yours,

/s/ Leonardo C. Maguigad, M.D.
Leonardo C. Maguigad, M.D.

UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES

Case No. 78-DCWC-82

OWCP No. 100376

In the matter of:

RALPH RILEY, *Claimant,*

vs.

FEDERAL SHEET METAL, *Employer,*

and

INSURANCE COMPANY OF NORTH AMERICA, *Carrier.*

La Plata, Maryland
Friday, May 19, 1978

DEPOSITION OF: GUILLERMO E. SANCHEZ, M.D.

called for oral examination by counsel for the Claimant in the office of Dr. Guillermo E. Sanchez, Charles Street, La Plata, Maryland, beginning at 12:55 P.M. on Friday, May 19, 1978, before Stephany L. Jerome, Notary Public for the State of Maryland, in and for Montgomery County, when were present:

ON BEHALF OF THE CLAIMANT:
ASHCRAFT, GEREL & KOONZ
By: JAMES F. GREEN, Esquire
2101 L Street, N. W., Suite 303
Washington, D. C. 20037

[2] ON BEHALF OF THE EMPLOYER AND CARRIER:
GALIHER, CLARKE, MARTELL & DONNELLY
By: RICHARD W. GALIHER, JR., Esquire
1215 - 19th Street, N.W.
Washington, D. C. 20036

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| *Witness:* | (Claimant) *Mr. Green* | (Employer and Carrier) *Mr. Galiher* |
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[3] Thereupon,

**Guillermo E. Sanchez, M.D.**

having been duly sworn by the Notary Public, was examined upon his oath and testified as follows:

### EXAMINATION ON BEHALF OF THE CLAIMANT

By Mr. Green:

Q. Doctor, if I could, would you state for the record your full name, sir, and professional address?

A. My full name is Guillermo E. Sanchez. My office is in La Plata on Charles Street, Post Office Box 387 and in Waldorf, Charles Professional Center, Waldorf, Maryland, 20601.

Q. Doctor, I believe for this deposition you prepared a curriculum vitae, is that correct sir?

A. Not for this deposition. I always have it on my own.

MR. GREEN: What I'm going to do is have that marked as Deposition Exhibit Number 1. Mr. Galiher has a copy of that and is reviewing it.

(Whereupon, the curriculum vitae was marked for identification as Claimant's Deposition Exhibit Number 1.)

By MR. GREEN:

Q. Now, Doctor, for purposes of your qualifications as an expert, do you practice in a particular specialty, sir?
A. Yes. My practice is limited to orthopedic surgery.

Q. And are you a Board Certified orthopedic surgeon?
A. I'm Board eligible, and I'm taking the certifying [4] examination in September of this year.

MR. GREEN: All right, sir. The rest of the curriculum vitae is clear. I would move that the doctor is able to express an opinion considered as an expert opinion for purposes of this deposition.

Do you have any questions?

## EXAMINATION ON BEHALF OF THE EMPLOYER AND CARRIER

By MR. GALIHER:

Q. Doctor, have you ever taken those Boards before?
A. No.

Q. Do you speak Spanish fluently?
A. Yes. Better than English at least. I'm not sure.

MR. GALIHER: I have no other questions at this time.

MR. GREEN: Doctor, I think your English is fine. If you don't understand any questions that I might ask, you please don't hesitate to ask me to repeat them and I will.

## FURTHER EXAMINATION ON BEHALF OF THE CLAIMANT

By Mr. Green:

Q. Doctor, did there come a time when you saw a man by the name of Ralph Riley in 1975?

A. Yes, sir.

Q. And could you tell us, Doctor, when is the first time you saw Mr. Riley in your professional capacity as an orthopedic surgeon?

[5] A. On which I was called in consultation on November 23rd, 1975. Mr. Riley had been admitted to the intensive unit at Physicians Memorial Hospital under the care of a cardiologist Dr. Harry L. Burke because the patient had presented in the emergency room with symptoms that were suggestive of a cardiac condition. After Dr. Burke did his thorough evaluation he found no indication of a heart problem causing the symptoms, and he thought the problem was related to a neck condition and that was the reason I was consulted.

So I saw him first November 23, 1975 and my history taken at that time at the hospital was as follows. Mr. Riley is a 51 year old male sheet metal worker who stated that he had problems with his neck since 1970. The initial onset was spontaneous and gradual with pain radiating through his shoulders and arms. And when he first consulted his physician he was told he had a cervical osteoarthritis and had an extensive plan of conservative treatment which included physical therapy and different kinds of anti-inflammatory agents, muscle relaxants and so forth, that gave him only partial relief of his symptoms.

The physical therapy was discontinued eventually because the patient states that gave him headaches. In regard to injuries he mentioned an injury in 1969 that he fell against a masonry wall, but at that time he remembers that the problem was related mainly to the left shoulder. He also

mentioned another injury while he was with the Marines. In a drill he fell [6] off a horse and was dragged for several miles, he says maybe a mile—I mean for several feet, maybe a mile.

In any event, since 1970 patient states that he had a flare-up that required medication, some of them very strong—Indocin. That is an anti-inflammatory agent. And his symptoms were mainly described as pains on the back of his neck going down both arms, but more towards the left, and at times going down to the tips of the fingers. They were increased by activity, coughing or sneezing. He had also tingling numbness sensation, mainly on the left side. And rotational movements—meaning from side to side—seemed to aggravate the symptoms.

In regard to the type of work, he stated that most of his work is overhead type and involves quite a bit of hyperextension of the neck. That means that most of his work he will have to do with his neck bending upwards.

We reviewed the records also that Dr. Burke had on the chart. Then we performed a physical examination. Found that he held his neck in a semiflexed position. That is tilted forward. He had a radial range of motion which by bending his neck he was able to come to two fingers—I mentioned here—from the sternal notch to the chin. And coming to straighten out his neck he was only able to come to the neutral position. He was unable to come further than that. He had a rotational movement angle of 30 degrees, about midway what's normal. The lateral bending from side to side was—I term it—slightly limited. [7] There was a tenderness to percussion and palpation of the spinous process—that is the little bumps on the back of the neck—from C-4 to C-7. His reflexes were equal. Well, he had a weakness of the power of grip tested only with the fingers. The sensation at that time to pinprick was within normal limits.

So after I finished the physical examination, we reviewed the x-ray that had already been ordered, and they revealed signs of osteoarthritis with a narrowing of the disc space from C-5 and C-6 and C-6 to C-7. And there appeared to be also encroachment of the foramina of C-5 and C-6. That means that there was a possibility that the nerve at those levels was under some kind of pressure.

My initial impression as far as diagnosis was that of osteoarthritis of the cervical spine with radiculopathy at C-6 and C-7, meaning compression of the nerve again at the C-6 and C-7 spaces. So at that time I recommended that he be put on an intermittent cervical traction. He was given Valium which is a sedative and muscle relaxant. And also that he take ultrasonic treatments and heat applications while in the hospital.

Q. Doctor, let me stop you for one second. Had Dr. Burke at that point released him from his cardiac care, do you know sir?

A. Yes. He felt that there was no indication of a heart condition. He had a check of the cardiogram, the cardiac signs and multiple laboratory examinations that did not support a [8] diagnosis of a heart condition.

Q. Fine, sir. If you could continue, what happened next?

A. Well, with these measures of treatment there was very little improvement, and he was unable to tolerate traction so we gave him a nerve block with Xylocaine.

Evidently at that time the patient decided to go back to his family physician, Dr. Wisotsky I think. And after discussing with Dr. Burke, we thought he could be released from the hospital and follow medical treatment on an outpatient basis.

Q. Doctor, did you then see Mr. Riley on an outpatient basis, sir?

A. Yes, sir. Then the first time he returned to my office was on December 19, 1975. So on that office visit was when

Mr. Riley first told me that there had been no relief on his neck pain. There was still radiation through the upper extremities, and it appeared to be no help from the medications either.

And then he mentioned that on November 19, 1975 he was working at Walter Reed Army Medical Center and he was moving duct work into position when he strained his neck. Now, he stated that he had pain right at the base of his neck. He was already taking medications, and he took some of his medication which gave him temporary relief.

MR. GALIHER: Doctor, excuse me.

[9] THE WITNESS: Yes, sir.

MR. GALIHER: Is this still part of the history that you received pertaining to the November 19, 1975 accident that you're detailing in this point in time?

THE WITNESS: I don't understand your question. What I gave is hospital history as it was given by the patient.

MR. GALIHER: Right, but when he came——

THE WITNESS: When he came on the 19th to the office, like I mentioned before, he told me that there was no relief from his symptoms, and was at that time when he explained to me that on the 19th of November while working at Walter Reed he strained his neck. And I'm giving the details that he stated that he was already on medication so he took some of what he had.

And then the symptoms became so severe with chest pain, that he was rushed to the emergency room in the hospital, and that it when he came under the care of Dr. Burke. And he also mentioned—Obviously the first thing I asked him was why you didn't tell me that when you were in the hospital, and he mentioned to me that with all the excitement about having an acute heart attack he forgot to mention either to me or Dr. Burke.

So that was the time that he mentioned that his problems had been aggravated or made worse while he was at work. So in that office visit on physical examination there [10] was still restricted motion. No drastic change from what was reported in the hospital, 30 degrees on rotation and tenderness on the same area. In addition he complained of stabbing pain going across the left shoulder and left arm. So he was referred to the physical therapist—we have a physical therapist in here—to continue the same plan of treatment that he had in the hospital.

He took five, six times and by then I advise him to take the treatments for three weeks, physical therapy, and then to return here in three weeks. Okay. That was on December 19.

Then I didn't see him again until May 12th, 1976 when he came back again. At that time the problem was related to acute onset of pain and swelling of the right elbow. That was diagnosed as olecranon bursitis. The elbow was full of fluid from the inflammation. This was injected and aspirated, and that sort of solved the problems with the elbow. And he was still having problems with his neck. His medications were refilled and he was advised to remain at rest. So that was for May 1976 which was the problem mainly related to the elbow.

Okay. Then he returned on May 21st, 1976. That was for treatment again of pain on his neck radiating to the left shoulder. There was very little change on the physical findings. And then he was started on Motrin which at that [11] time was a new medication which had just come out as a part of symptomatic treatment of arthritis. I think I have the prescriptions in here. Okay. Yes, that is the Motrin.

And since that time the visits became more regular. He was examined on June 8th, 1976. At that time was sort of a semi-emergency visit because patient states that he was just trying to mow the grass at home, started the lawn mower and acute pain on his neck developed that was much

more severe than usual. And again he was advised that there was no magic medication or magic cure for that, that he had to remain on limited activity and continue taking the Motrin which appeared to give him partial relief of the symptoms, or at least help to make it more bearable.

Prior [sic] to that he had another problem that required his readmission to the hospital. That was on March 30, 1977. That started after the lawn mower, I have to make a correction on that. At that time he was admitted to the hospital.

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[16] Q. Doctor, based on your treatment of Mr. Riley since 1975 and the history Mr. Riley did give you of the incident at work, Doctor, based on these facts I wonder if you have an opinion that you might be able to state with a degree of reasonable medical certainty as to whether or not the incident at work aggravated Mr. Riley's underlying arthritic condition?

A. Yes, I do. The injury that he describes working with bending and certain twist to the neck. I think that can be considered an aggravating factor, but obviously he had a long-standing pre-existing condition that makes his neck much more vulnerable to injury. I do not expect today a person who bends [17] his neck and has twisting at the neck would end up like him, but a person who has a long-standing arthritic condition and twists his neck would do it.

Q. Do you feel that Mr. Riley—an opinion based on a reasonable degree of medical certainty—is permanently disabled from his occupation as a sheet metal worker?

A. Yes. I would not recommend him to go back as a sheet metal worker.

Q. Doctor, Mr. Riley's testimony at the hearing in this matter is of a recollection of actually physically striking his neck as he climbed between two uneven sections of scaffolding, and the movement that you describe by way of a twisting or hyperextension of the neck took place appar-

ently, but Mr. Riley also suggests that he actually physically came in contact with a piece of duct work.

Would that factor in any way change your diagnosis, as to whether or not there was a striking to the neck, would that affect your diagnosis or your current impression at all?

MR. GALIHER: Objection.

THE WITNESS: No.

MR. GREEN: What are the grounds for the objection?

MR. GALIHER: He can go ahead and answer.

MR. GREEN: I would just like to get the grounds on the record because we're post-trial now.

MR. GALIHER: The question is objected to because I [18] don't think the characterization of Mr. Riley's testimony is completely accurate. It probably would be more accurate to read what the transcript is. And this doctor has no knowledge of a striking having occurred, so I'm not sure that he can be in a position to say what might have been his condition if such a striking had occurred or did not occur.

THE WITNESS: No. I don't think the diagnosis can be changed in this.

By MR. GREEN:

Q. You would not change. It would not affect——
A. No. No. I don't think so.

Q. Fine, Doctor. Doctor, based on your treatment of Mr. Riley for those past few years, do you believe that he has been cooperative with you with regard to his treatment and care?
A. Yes, sir.

Q. Doctor, do you believe that he has been forthright and honest with you during his treatment and care?

A. I think so.

MR. GREEN: I have nothing further. Thank you, Doctor.

MR. GALIHER: Doctor, can we take a five minute break while I take a look at the records that you have been referring to?

THE WITNESS: Yes.

* * * * * * * * * *

[20] Q. Now, Doctor, you have in your file numerous medical report forms that deal with hospitalization for Mr. Riley. As a matter of fact, when I observed them they were all clipped together in one pile. Can you refer to those a minute?

A. You mean those insurance forms?

Q. Yes. Here they are.

Okay. Now, I want to go through each date—These are attending physician's report that you and I are both looking at. When do they begin and when do they end, if you tell us that?

A. July 19, 1976, March 1976, January 10, '77 and 11/7, October 27, '77, September 13, '76, August 2, '77, June 14, '76, April 1, '77 and May 17, '77.

Q. Now, Doctor, are each of those reports that you rendered to Mr. Riley's union in connection with billing medical services and having them pay you?

A. Yes, that is to the union insurance.

Q. Doctor, there is a question on there at the top of it that says Question Number B, "Is condition due to injury or sickness arising out of patient's employment?" And reviewing your file, can you see if you ever gave an indication in those reports that the answer to that question was yes?

A. No. I don't have that noted, but we didn't do that because——

[21] Q. Well, wait a minute. The answer to the question is no?

A. No.

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Q. Doctor, it's clear from your testimony that during the initial hospital admission, and that was in November of 1975, Mr. Riley mentioned nothing to do about an injury at work.

A. No.

Q. Now, when you say no, you really mean that there was no mention of an injury at work, is that correct?

A. In the initial hospital consultation, yes, sir.

Q. Right, that's correct.

A. That's correct.

Q. Now, on how many occasions did you see Mr. Riley in the hospital in November of 75, was it just on one occasion or did you have follow-up visits to him while he was in the hospital?

A. Unfortunately I don't have a full copy here of the [22] hospital record, but he was seen more than once. But a thorough inquiry of the problem, you do it only on the first visit. You don't go to the patient every day and ask the whole story every day. And the following visit is to find out whether it's better or not. I don't need to go back through the whole thing, what the problem was.

Q. It's clear, however, that during that whole time during that hospitalization, at which time he saw you on more than one occasion, he indicated to you nothing about this injury at work?

A. Yes, sir.

• • • • • • • • • •

[23] Okay. Can you recall in November of 1975 or close to that time, from your notes or anything you can remember

about Mr. Riley's condition, what was the state of the arthritis in his neck at that time?

A. By x-rays you cannot say what is the state of the neck. What we look for on the x-rays and we can evaluate initially, wanted to know whether there's a fracture or dislocation or something new or something that happened at the time of the stated injury. And that by the x-rays did not show anything new. What he had in there is a degenerative process, long-standing process, involving narrowing of the disc spaces.

Q. Have you, in x-rays that you have taken after that time, noticed any change by x-rays in the condition of his neck as far as the arthritis?

A. There has been no drastic change. The arthritis has remained stationary.

Q. Now, Doctor, at the time you initially saw him at the hospital and made your examination, did you find any indication of a bruise or any other mark that you noted in your report to indicate that Mr. Riley had suffered a trauma to his neck?

A. No. There were no external signs of injury, but that [24] doesn't rule out the possibility of injury. You can have quite an injury without any bruises or swelling or anything of the like.

Q. Now, you indicated, essentially, in answer to Mr. Green's questions that your diagnosis would have been the same whether he told you he twisted his neck or whether he struck his neck, is that correct? Is that a fair statement?

A. Yes. The diagnosis was cervical arthritis or cervical radiculopathy.

Q. Is there any reason to suspect that a blow of the neck as opposed to a twisting of the neck would cause any different symptoms than you observed in Mr. Riley at the time of your initial examination?

MR. GREEN: Doctor, before you answer the question let me indicate a concern. By this line of questioning, Dick, are you accepting—Or I should put it this way. By this line are you removing your prior objection to my question to him?

MR. GALIHER: No.

MR. GREEN: Thank you, Doctor. Please go ahead.

THE WITNESS: Okay. Well, a blow and a twisting injury, most of the time they go together because if you receive a blow just by natural tendency or by reflex you have a tendency to go away from the blow.

By MR. GALIHER:

Well, we're talking about two things here. With the [25] motions that you're making of the head, was it your understanding that the type of injury that Mr. Riley suffered was an injury that caused his head to be stretched backwards or to be twisted to the side?

A. Twisted and backwards. Twisted actually.

Q. Is that the type of injury that he described to you, that it was twisted?

A. Well, I didn't go very much into the details of how he did it. He was——

Q. Well, I must ask you to be very exact on what you actually recall or what you actually have noted in your records as opposed to your opinion as to how this could have occurred.

A. No. I did not go much in to the details of how it occurred.

Q. Okay. So you don't know from your records and your recollection at this time whether Mr. Riley indicated that the motion of his neck was backwards and up or from side to side——

A. No. I don't have that information.

Q. When the injury occurred?
A. No.

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[27] Q. So that meant that as he described it to you that he had suffered neck pain on at least an off and on basis since 1970 which he described to you was due to the arthritis which had been discovered in 1970, is that correct?

A. Yes, but I don't think the symptoms were ever severe enough to require prolonged hospitalization or time loss of work or——

Q. How long was Mr. Riley in the hospital between the time you first examined him and the time that you discharged him?

A. Unfortunately we didn't request the hospital records, but I think it was between seven and ten days, but I cannot say that with certainty. That hospital record was under Dr. Burke's name and everything went to him. I only got a copy of my consultation.

Q. After Mr. Riley got out of the hospital initially, did his condition improve?

A. Initially did not improve, but over the course of the— Like when he was first examined after he was discharged a month later, he was about the same.

Q. And he still had the 30 percent restriction of motion that you have indicated in his neck?

A. Right.

Q. When, in your opinion, did his condition go from a temporary condition to a permanent condition in his neck as a result, in your opinion, of the aggravation that you have [28] described that he may have suffered in November of '75?

A. I don't think we can answer that question because I don't think we have finished with him. I cannot discharge him because I feel he still needs supervision, and, furthermore, the consultant I referred him to, he has suggested

that if the symptoms persist he may need a myelogram and further delineation of treatment depending upon that.

Q. Are his symptoms to his back which arose after this the primary problem at this time, or is it the neck?

A. It's the neck.

Q. Has Mr. Riley ever been in a neck collar?

A. Initially when he was in the hospital we tried, but that was of no significant help.

Q. Have you ever had occasion to have him in a collar since he was out of the hospital?

A. No. The neck collar for this type of problem offers very little help. Has to be a more dynamic type of treatment—traction, postural exercises.

Q. You have indicated in your testimony that you don't think that Mr. Riley could go back and do sheet metal work again, is that correct?

A. Yes.

Q. When did you first come to that conclusion that he could not go back and do that work?

A. Well, I have to explain this. I was under the impression [29] that he has retired, and I had never considered him, you know, on the basis of sending him back to work. But now, if I find out that he is a sheet metal worker, my answer is no, he cannot go back. But I have never given it consideration because—when are you going to be going back, because I thought he has retired.

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[30] Q. Do you feel that Mr. Riley, except for his neck, is in good physical condition for a man of his age?

A. His general health I would consider satisfactory.

Q. And according to Dr. Sidhu's report Mr. Riley has actually been in the hospital—in Physicians Memorial Hospital in May of 1976, at least to the emergency room, where he had nerve blocks in his neck, is that correct?

A. Yes, sir. That was—Let's see. That record may be with Dr. Burke.

Q. It's May '76.
A. May '76?

Q. Right. According to Dr. Sidhu's report, severe neck pain, nerve blocks and so forth.
A. That might have been perhaps '77.

Q. Then Dr. Sidhu refers in the next paragraph of his report to March '77 reports. Now, did you have occasion in your [31] records—and I probably can help you find them—to find instances where Mr. Riley would be doing something and he would hurt his back or hurt his neck causing additional neck symptoms to him? Could you refer to your records?
A. I remember the lawn mower incident that you had mentioned before, but I don't remember his mentioning any—You mean one time in December he came back from New York after a trip and he mentioned that his neck was acting up again? He lifted two small logs to put on the fire once during the winter and that gave him pain, but I don't consider that anything like additional injury.

Q. That was in where?
A. December 13. The winter of 1977, lifted two small logs.

Q. There's also an incident there, Doctor, about lifting some grocery bags. Can you find that?
A. Yes. Lifting grocery bags I wouldn't consider, either, something to make a new case out of that, you know, lifting grocery bags is almost a part of normal life, and if that aggravates the pain, I wouldn't consider that a new problem, but I don't remember having—I don't remember seeing that.

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[32] Q. And what activities do you feel he can do and what activities do you feel that he cannot do due to the injury to his neck?

A. I will bar him from heavy lifting. I mean no more than 25 pounds.

Q. Is this due to the neck or the back?

A. To the neck.

Q. You're restricting this to the neck?

A. He should be restricted to anything that is going to require overhead work or lifting, getting into awkward positions, prolonged standing or prolonged walking. But as far as doing light-type of work, desk-type of work, clerical work, I think he is qualified to do that.

Q. Most recently you had given him physical therapy. Within the last three months would it be?

A. That's right.

Q. And was that because of increase of his symptoms that necessitated that?

A. Yes.

Q. Was there any particular reason why his symptoms increased at that time that he described to you?

[33] A. Let me see. He was referred to the therapist recently, was last December '77 was the last. Let's see. On December '77 that is when he had come back from a trip to New York and his neck had become increasingly painful. That was the only thing I can remember.

Q. Okay. And because of increase in symptoms, that is why you referred him for physical therapy.

A. Right.

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[35] Q. And this report is dated July 25, 1977 with a cover letter of July 26th, 1977 to you, and I would appreciate you, Doctor—I'd like to have that marked as Claim-

ant's 2 for the deposition. Doctor, I would appreciate it if you could find your original of that.

A. Of that report?

Q. Yes, sir.

(Whereupon, the report from Dr. Sidhu was marked for identification as Claimant's Deposition Exhibit Number 2.)

By Mr. Green:

Q. Doctor, I would appreciate it if you could for the purposes of this record if you would read the first full paragraph.

A. This 53 year old male patient was seen in the office on July 25, 1977. The patient gives a history that he has had what he describes as cervical arthritis since 1970 and has been treated by Dr. Wisotsky and Dr. Pavot at Cafritz Hospital. He was put on physical therapy and medications including Indocin. At that time he was having intermittent pain and stiffness of his neck. On November 19, 1975 he was at work and was doing sheet metal duct work at Walter Reed Hospital when he struck his neck and shoulder on the steel duct. He started having severe pain [36] in his neck and also pain in his anterior chest and radiating into the left arm. He was admitted to Physicians Memorial Hospital to the intensive care unit because it was felt that he might have had a heart attack. However, he was investigated and was found not to have had a heart attack. He was seen by Dr. Sanchez at that time. In addition he was seen by Dr. Burke and was treated with cervical traction, bed rest and medications.

Q. Doctor, let me stop you at that point. Would Dr. Sidhu have gotten that history from you or from Mr. Riley or from the both of you?

A. From the patient.

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[38]

**CERTIFICATE OF SHORTHAND REPORTER—NOTARY PUBLIC**

I, Stephany L. Jerome, the officer before whom the foregoing deposition was taken, do hereby certify that the witness, Guillermo E. Sanchez, M. D., was duly sworn by me; that the testimony of said witness was taken by me stenographically and thereafter reduced to typewriting by me; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to this litigation and have no interest, financial or otherwise, in the outcome of this matter.

In witness whereof, I have hereunto set my hand and affixed my notarial seal this 26th day of May 1978.

Notary Public in and for
Montgomery County, Maryland

My commission expires
July 1, 1978.

**SANCHEZ' DEPOSITION EXHIBIT 2**

RAJINDAR S. SIDHU, M.D., P.A.
4710 Auth Place, Suite 510
Camp Springs, Maryland 20023

July 26, 1977

Guillermo Sanchez, M.D.
Charles Professional Building
Waldorf, Maryland 20601

Re: Ralph E. Riley

Dear Dr. Sanchez:

Enclosed please find a copy of my office consultation notes on Ralph E. Riley dated July 25, 1977.

Thank you for this referral.

Sincerely,

/s/ RAJINDAR S. SIDHU
Rajindar S. Sidhu, M.D.

RSS:mkb
Enc.

RAJINDAR S. SIDHU, M.D., P.A.
4710 Auth Place, Suite 510
Camp Springs, Maryland 20023

July 25, 1977

RALPH E. RILEY:

This 53 years old, male patient was seen in the office on July 25, 1977.

The patient gives a history that he has had what he describes as cervical arthritis since 1970 and has been treated by Dr. Wisotsky and Dr. Pavot at Cafritz Hospital. He was put on physical therapy and medications including Indocin. At that time he was having intermittent pain and stiffness of his neck. On November 19, 1975 he was at work and was doing sheet metal duct work at Walter Reed Hospital when he struct [sic] his neck and shoulder on the steel duct. He started having severe pain in his neck and also pain in his anterior chest and radiating into the left arm. He was admitted to Physician's Memorial Hospital to the intensive care unit because it was felt that he might have had heart attack. However, he was investigated and was found not to have had a heart attack. He was seen by Dr. Sanchez at that time. In addition, he was seen by Dr. Burke and was treated with cervical traction, bedrest and medications. He was also put on physical therapy. He had x-rays of his neck taken and the patient was told that he had osteoarthritis of his neck. He was continued on Indocin and Valium. In January 1976 he started having what he described as palsies and shaking attacks and this was treated with Valium. He still has these attacks off and on.

In May 1976 he had very severe neck pain and pain in his shoulders and he went to the emergency room of Physician's Memorial Hospital and was seen by Dr. Sanchez and he had nerve blocks done in his neck. With this he showed improvement. He was also put on Motrin in addition to Valium at this time.

In March 1977 he had severe low back pain with spasms and he was admitted to Physician's Memorial Hospital again and stayed in pelvic traction for about 9 days and continued physical therapy as an outpatient for 3 weeks. With this his back pain improved markedly. He continues to have neck pain off and on which is aggravated by any exertion and when this happens he feels his neck swells up and gets a lump in the left side of the back of the neck. In addition he has pain going down to the anterior chest bilaterally and pain also goes into his shoulders and arms with intermittent numbness in his hands and fingers. In addition he has quivering feeling in his muscles mostly in the triceps especially on the left side.

In addition to this he has complained of intermittent severe headaches, mostly in the back of the head and mostly on the left. These pains are also aggravated by humidity and any exertion. He also feels that his grip is weak, especially on the left side. At this time he does not have any low back pain but he does have some soreness in his right hip.

In the past history, he had surgery for pilonidal cyst in 1956 and also had what he described as bursitic tumor removed from the left shoulder in September 1969. He also has had malaria and jaundice when he was in the service. He was told that he had high blood pressure and was treated for several months but at this time he is on a diet because of his hypercholesterolemia. He has a strong family history of heart attacks and his father had diabetes. He said that he is allergic to penicillin.

At the present time he takes Motrin about 3 tablets a day and Valium PRN. He also takes Tylenol No. 3 and requires 3 or 4 pills every day.

X-rays of the cervical spine done at PMH have been reported to show degenerative changes at C5-6 and C6-7 with foramina encroachment. There is also minimal degenerative spurring of L4 lumbar vertebral body. I have not had an opportunity to review his x-rays.

On examination, examination of the head is unremarkable. Examination of the neck shows decreased range of motion, especially flexion extension but much more so he has difficulty with rotation to the left side. Examination of the lower back is unremarkable except for some decrease of range of motion. Straight leg raising is 90° bilaterally.

On neurological examination, his cranial nerves are normal. He has slight weakness of the left biceps and triceps. Sensory examination shows slight decrease of touch and pain sensation in both hands except for the thumb and extending up to the medial forearm up to the elbow. This would correspond to C6 and C7 dermatomes. Deep tendon reflexes are symmetrical except for the triceps jerks which are slightly decreased especially on the left side. Reflexes in the lower extremities are hyperactive. His plantars are flexed bilaterally. His coordination is normal.

The patient obviously has cervical degenerative arthritic disease with degeneration of the discs at C5-6 and C6-7 with evidence of mild radiculopathy, and perhaps early myelopathy. At this time the patient seems to be quite comfortable so I would continue to treat him conservatively but I discussed with him that he might require myelography and surgery if his symptoms get worse or he continues to have exacerbations of his symptoms. I have not given him a return appointment but told him to avoid any strenuous activity especially anything which strains his neck then he could keep his condition under good control. Furthermore he had history of pain and swelling of his other joints which suggests generalized arthritis, perhaps rheumatoid arthritis which should be investigated and treated medically. He will go back to see Dr. Sanchez for conservative management. If he has exacerbations or worsening of his condition then he should be admitted to the hospital for myelography and further treatment.

/s/ Rajindar S. Sidhu
Rajindar S. Sidhu, M.D.

RSS:mkb